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Employment Taxes; Applicable on and After January 1, 1955

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Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 6516]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Republication of Regulations

All Employment Tax Regulations published before December 1, 1960, under Title 26, Part 31, of the Code of Federal Regulations, pursuant to the Internal Revenue Code of 1954, are hereby republished for the purpose of making certain editorial changes, including corrections of form, style, and internal references.

Subpart A—Introduction

Sec.
31.0–1 Introduction.
31.0–2 General definitions and use of terms.
31.0–3 Scope of regulations.
31.0–4 Extent to which the regulations in this part supersede prior regulations.

Subpart B—Federal Insurance Contributions Act (Chapter 21, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

31.3101 Statutory provisions; rate of tax.
31.3101–1 Measure of employee tax.
31.3101–2 Rates and computation of employee tax.
31.3101–3 When employee tax attaches.
31.3102 Statutory provisions; deduction of tax from wages.
31.3102–1 Collection of, and liability for, employee tax.
31.3102–2 Manner and time of payment of employee tax.

TAX ON EMPLOYERS

31.3111 Statutory provisions; rate of tax.
31.3111–1 Meaure of employer tax.
31.3111–2 Rates and computation of employer tax.
31.3111–3 When employer tax attaches.
31.3111–4 Liability for employer tax.
31.3111–5 Manner and time of payment of employer tax.
31.3112 Statutory provisions; instrumentalities of the United States.
31.3112–1 Instrumentalities of the United States specifically exempted from the employer tax.

GENERAL PROVISIONS

Sec.
31.3121 (a) Statutory provisions; definitions; wages.
31.3121 (a)–1 Wages.
31.3121 (a)–2 Wages; when paid and received.
31.3121 (a) (1) Statutory provisions; definitions; wages; $4,200 limitation.
31.3121 (a) (1)–1 $4,200 limitation.
31.3121 (a) (2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3121 (a) (2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3121 (a) (3) Statutory provisions; definitions; wages; retirement payments.
31.3121 (a) (3)–1 Retirement payments.
31.3121 (a) (4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3121 (a) (4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3121 (a) (5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3121 (a) (5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3121 (a) (6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.
31.3121 (a) (6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.
31.3121 (a) (7) Statutory provisions; definitions; wages; payments for service not in the course of the employer's trade or business or for domestic service.
31.3121 (a) (7)–1 Payments for services not in the course of employer's trade or business or for domestic service.
31.3121 (a) (8) Statutory provisions; definitions; wages; payments for agricultural labor.
31.3121 (a) (8)–1 Payments for agricultural labor.
31.3121 (a) (9) Statutory provisions; definitions; wages; payments to stand-by employees.
31.3121 (a) (9)–1 Payments to stand-by employees.
31.3121 (a) (10) Statutory provisions; definitions; wages; payments to certain home workers.
31.3121 (a) (10)–1 Payments to certain home workers.
31.3121 (b) Statutory provisions; definitions; employment.
31.3121 (b)–1 Employment; services to which the regulations in this subpart apply.
31.3121 (b)–2 Employment; services performed before 1955.
31.3121 (b)–3 Employment; services performed after 1954.
31.3121 (b)–4 Employment; excepted services in general.
31.3121 (b) (1) Statutory provisions; definitions; employment; agricultural services.
31.3121 (b) (1)–1 Services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers.
31.3121 (b) (2) Statutory provisions; definitions; employment; domestic service performed by students for certain college organizations.
31.3121 (b) (2)–1 Domestic service performed by students for certain college organizations.
31.3121 (b) (3) Statutory provisions; definitions; employment; family employment.
31.3121 (b) (3)–1 Family employment.
31.3121 (b) (4) Statutory provisions; definitions; employment; services performed on or in connection with a non-American vessel or aircraft.
31.3121 (b) (4)–1 Services performed on or in connection with a non-American vessel or aircraft.
31.3121 (b) (5) Statutory provisions; definitions; employment; services in employ of an instrumentality of the United States specifically exempted from the employer tax.
31.3121 (b) (5)–1 Services in employ of an instrumentality of the United States specifically exempted from the employer tax.
31.3121 (b) (6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.
31.3121 (b) (6)–1 Services in employ of United States or instrumentality thereof.
31.3121 (b) (7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.
31.3121 (b) (7)–1 Services in employ of States or their political subdivisions or instrumentalities.
31.3121 (b) (8) Statutory provisions; definitions; employment; services performed by a minister of a church or a member of a religious order; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.
31.3121 (b) (8)–1 Services performed by a minister of a church or a member of a religious order.
31.3121 (b) (8)–2 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.
31.3121 (b) (9) Statutory provisions; definitions; employment; services performed by an employee or an employee representative as defined in section 3231.
31.3121 (b) (9)–1 Railroad industry; services performed by an employee or an employee representative as defined in section 3231.
31.3121 (b) (10) Statutory provisions; definitions; employment; services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; services performed in the employ of a school, college, or university by certain students.
31.3121 (b) (10)–1 Services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax.
31.3121 (b) (10)–2 Services performed in the employ of a school, college, or university by certain students.
31.3121 (b) (11) Statutory provisions; definitions; employment; services in the employ of a foreign government.
31.3121 (b) (11)–1 Services in the employ of a foreign government.
31.3121 (b) (12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.
31.3121 (b) (12)–1 Services in employ of wholly owned instrumentality of foreign government.
31.3121 (b) (13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.
31.3121 (b) (13)–1 Services of student nurse or hospital intern.
31.3121 (b) (14) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.
31.3121 (b) (14)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.
31.3121 (b) (15) Statutory provisions; definitions; employment; services in employ of international organization.
31.3121 (b) (15)–1 Services in employ of international organization.
31.3121 (c) Statutory provisions; definitions; included and excluded services.
31.3121 (c)–1 Included and excluded services.
31.3121 (d) Statutory provisions; definitions; employee.
31.3121 (d)–1 Who are employees.
31.3121 (d)–2 Who are employers.
31.3121 (e) Statutory provisions; definitions; State, United States, and citizen.

Sec.
31.3121 (e)–1 State, United States, and citizen.
31.3121 (f) Statutory provisions; definitions; American vessel and aircraft.
31.3121 (f)–1 American vessel and aircraft.
31.3121 (g) Statutory provisions; definitions; agricultural labor.
31.3121 (g)–1 Agricultural labor.
31.3121 (h) Statutory provisions; definitions; American employer.
31.3121 (h)–1 American employer.
31.3121 (i) Statutory provisions; definitions; computation of wages in certain cases.
31.3121 (i)–1 Computation to nearest dollar of cash remuneration for domestic service.
31.3121 (j) Statutory provisions; definitions; covered transportation service.
31.3121 (j)–1 Covered transportation service.
31.3121 (k) Statutory provisions; definitions; waiver of exemption by religious, charitable, and certain other organizations.
31.3121 (k)–1 Waiver of exemption from taxes.
31.3121(l) Statutory provisions; definitions; agreements entered into by domestic corporations with respect to foreign subsidiaries.
31.3121(l)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.
31.3122 Statutory provisions; Federal service.
31.3123 Statutory provisions; deductions as constructive payments.
31.3123–1 Deductions by an employer from remuneration of an employee.
31.3124 Statutory provisions; estimate of revenue reduction.
31.3125 Statutory provisions; short title.

Subpart C—Railroad Retirement Tax Act (Chapter 22, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

31.3201 Statutory provisions; rate of tax.
31.3201–1 Measure of employee tax.
31.3201–2 Rate and computation of employee tax.
31.3202 Statutory provisions; deduction of tax from compensation.
31.3202–1 Collection of, and liability for, employee tax.

TAX ON EMPLOYEE REPRESENTATIVES

31.3211 Statutory provisions; rate of tax.
31.3211–1 Measure of employee representative tax.
31.3211–2 Rate and computation of employee representative tax.
31.3212 Statutory provisions; determination of compensation.
31.3212–1 Determination of compensation.

TAX ON EMPLOYERS

31.3221 Statutory provisions; rate of tax.
31.3221–1 Measure of employer tax.
31.3221–2 Rate and computation of employer tax.

GENERAL PROVISIONS

31.3231(a) Statutory provisions; definitions; employer.
31.3231(a)–1 Who are employers.
31.3231(b) Statutory provisions; definitions; employee.
31.3231(b)–1 Who are employees.
31.3231(c) Statutory provisions; definitions; employee representative.
31.3231(c)–1 Who are employee representatives.
31.3231(d) Statutory provisions; definitions; service.
31.3231(d)–1 Service.
31.3231(e) Statutory provisions; definitions; compensation.
31.3231(e)–1 Compensation.
31.3231(f) Statutory provisions; definitions; company.
31.3231(g) Statutory provisions; definitions; carrier.
31.3232 Statutory provisions; court jurisdiction.
31.3233 Statutory provisions; short title.

Subpart D—Federal Unemployment Tax Act (Chapter 23, Internal Revenue Code of 1954)

31.3301 Statutory provisions; rate of tax.
31.3301–1 Persons liable for tax.
31.3301–2 Measure of tax.
31.3301–3 Rate and computation of tax.
31.3301–4 When wages are paid.
31.3302 (a) Statutory provisions; credits against tax; contributions to State unemployment funds.
31.3302 (a)–1 Credit against tax for contributions paid.
31.3302 (a)–2 Refund of State contributions.
31.3302 (a)–3 Proof of credit under section 3302 (a).
31.3302 (b) Statutory provisions; credits against tax; additional credit.
31.3302 (b)–1 Additional credit against tax.
31.3302 (b)–2 Proof of additional credit under section 3302 (b).
31.3302 (c) Statutory provisions; credits against tax; limit on total credits.
31.3302 (c)–1 Limit on total credits.
31.3303 Statutory provisions; conditions of additional credit allowance.
31.3304 Statutory provisions; approval of State laws.
31.3305 Statutory provisions; applicability of State law.
31.3306 (a) Statutory provisions; definitions; employer.
31.3306 (a)–1 Who are employers.
31.3306 (b) Statutory provisions; definitions; wages.
31.3306 (b)–1 Wages.
31.3306 (b) (1) Statutory provisions; definitions; wages; $3,000 limitation.
31.3306 (b) (1)–1 $3,000 limitation.
31.3306 (b) (2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3306 (b) (2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3306 (b) (3) Statutory provisions; definitions; wages; retirement payments.
31.3306 (b) (3)–1 Retirement payments.
31.3306 (b) (4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3306 (b) (4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3306 (b) (5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3306 (b) (5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3306 (b) (6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.
31.3306 (b) (6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.
31.3306 (b) (7) Statutory provisions; definitions; wages; payments other than in cash for service not in the course of the employer's trade or business.
31.3306 (b) (7)–1 Payments other than in cash for service not in the course of employer's trade or business.
31.3306 (b) (8) Statutory provisions; definitions; wages; payments to stand-by employees.
31.3306 (b) (8)–1 Payments to stand-by employees.
31.3306 (c) Statutory provisions; definitions; employment.
31.3306 (c)–1 Employment; services performed before 1955.
31.3306 (c)–2 Employment; services performed after 1954.
31.3306 (c)–3 Employment; excepted services in general.
31.3306 (c) (1) Statutory provisions; definitions; employment; agricultural labor.
31.3306 (c) (1)–1 Agricultural labor.
31.3306 (c) (2) Statutory provisions; definitions; employment; domestic service.
31.3306 (c) (2)–1 Domestic service.
31.3306 (c) (3) Statutory provisions; definitions; employment; services not in the course of the employer's trade or business.
31.3306 (c) (3)–1 Services not in the course of employer's trade or business.
31.3306 (c) (4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel.
31.3306 (c) (4)–1 Services on or in connection with a non-American vessel.
31.3306 (c) (5) Statutory provisions; definitions; employment; family employment.
31.3306 (c) (5)–1 Family employment.
31.3306 (c) (6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.
31.3306 (c) (6)–1 Services in employ of United States or instrumentality thereof.
31.3306 (c) (7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.
31.3306 (c) (7)–1 Services in employ of States or their political subdivisions or instrumentalities.
31.3306 (c) (8) Statutory provisions; definitions; employment; services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.
31.3306 (c) (8)–1 Services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.
31.3306 (c) (9) Statutory provisions; definitions; employment; services performed by an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.
31.3306 (c) (9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.
31.3306 (c) (10) (A) Statutory provisions; definitions; employment; services in employ of certain organization exempt from income tax.
31.3306 (c) (10) (A)–1 Services in employ of certain organizations exempt from income tax.
31.3306 (c) (10) (B) Statutory provisions; definitions; employment; services in employ of agricultural or horticultural organization exempt from income tax.
31.3306 (c) (10) (B)–1 Services in employ of agricultural or horticultural organization exempt from income tax.
31.3306 (c) (10) (C) Statutory provisions; definitions; employment; services in employ of voluntary employees' beneficiary association.
31.3306 (c) (10) (C)–1 Services in employ of voluntary employees' beneficiary association.
31.3306 (c) (10) (D) Statutory provisions; definitions; employment; services in employ of Federal employees' beneficiary association.
31.3306 (c) (10) (D)–1 Services in employ of Federal employees' beneficiary association.

Sec.
31.3306 (c) (10) (E) Statutory provisions; definitions; employment; services of student in employ of school, college, or university not exempt from income tax.
31.3306 (c) (10) (E)-1 Services of student in employ of school, college, or university not exempt from income tax.
31.3306 (c) (11) Statutory provisions; definitions; employment; services in employ of foreign government.
31.3306 (c) (11)-1 Services in employ of foreign government.
31.3306 (c) (12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.
31.3306 (c) (12)-1 Services in employ of wholly owned instrumentality of foreign government.
31.3306 (c) (13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.
31.3306 (c) (13)-1 Services of student nurse or hospital intern.
31.3306 (c) (14) Statutory provisions; definitions; employment; services of insurance agent or solicitor.
31.3306 (c) (14)-1 Services of insurance agent or solicitor.
31.3306 (c) (15) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.
31.3306 (c) (15)-1 Services in delivery or distribution of newspapers, shopping news, or magazines.
31.3306 (c) (16) Statutory provisions; definitions; employment; services in employ of international organization.
31.3306 (c) (16)-1 Services in employ of international organization.
31.3306 (c) (17) Statutory provisions; definitions; employment; fishing services.
31.3306 (c) (17)-1 Fishing services.
31.3306 (d) Statutory provisions; definitions; included and excluded services.
31.3306 (d)-1 Included and excluded services.
31.3306 (e) Statutory provisions; definitions; State agency.
31.3306 (f) Statutory provisions; definitions; unemployment fund.
31.3306 (g) Statutory provisions; definitions; contributions.
31.3306 (h) Statutory provisions; definitions; compensation.
31.3306 (i) Statutory provisions; definitions; employee.
31.3306 (i)-1 Who are employees.
31.3306 (j) Statutory provisions; definitions; State.
31.3306 (k) Statutory provisions; definitions; agricultural labor.
31.3306 (k)-1 Agricultural labor.
31.3306 (l) Statutory provisions; definitions; certain employees of Bonneville Power Administrator.
31.3306 (m) Statutory provisions; definitions; American vessel.
31.3306 (m)-1 American vessel.
31.3306 (n) Statutory provisions; definitions; vessels operated by general agents of United States.
31.3306 (n)-1 Services on American vessel whose business is conducted by general agent of Secretary of Commerce.
31.3307 Statutory provisions; deductions as constructive payments.
31.3307-1 Deductions by an employer from remuneration of an employee.
31.3308 Statutory provisions; short title.

Subpart E—Collection of Income Tax at Source on Wages (Chapter 24, Internal Revenue Code of 1954)

31.3401 (a) Statutory provisions; definitions; wages.
31.3401 (a)-1 Wages.
31.3401 (a)-2 Exclusions from wages.
31.3401 (a) (1) Statutory provisions; definitions; wages; certain remuneration of members of the Armed Forces.
31.3401 (a) (1)-1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.
31.3401 (a) (2) Statutory provisions; definitions; wages; remuneration paid for agricultural labor.
31.3401 (a) (2)-1 Agricultural labor.
31.3401 (a) (3) Statutory provisions; definitions; wages; remuneration paid for domestic service.
31.3401 (a) (3)-1 Remuneration for domestic service.
31.3401 (a) (4) Statutory provisions; definitions; wages; cash remuneration for service not in the course of employer's trade or business.
31.3401 (a) (4)-1 Cash remuneration for service not in the course of employer's trade or business.
31.3401 (a) (5) Statutory provisions; definitions; wages; remuneration for services for foreign government or international organization.
31.3401 (a) (5)-1 Remuneration for services for foreign government or international organization.
31.3401 (a) (6) Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.
31.3401 (a) (6)-1 Remuneration for services of certain nonresident alien individuals.
31.3401 (a) (7) Statutory provisions; definitions; wages; remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave at frequent intervals.
31.3401 (a) (7)-1 Remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.
31.3401 (a) (8) (A) Statutory provisions; definitions; wages; remuneration paid for services performed by citizens outside the United States.
31.3401 (a) (8) (A)-1 Remuneration for services performed outside the United States by citizens of the United States.
31.3401 (a) (8) (B) Statutory provisions; definitions; wages; remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.
31.3401 (a) (8) (B)-1 Remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.
31.3401 (a) (8) (C) Statutory provisions; definitions; wages; remuneration for services performed in Puerto Rico by citizen of the United States.
31.3401 (a) (8) (C)-1 Remuneration for services performed in Puerto Rico by citizen of the United States.
31.3401 (a) (9) Statutory provisions; definitions; wages; remuneration for services performed by a minister of a church or a member of a religious order.
31.3401 (a) (9)-1 Remuneration for services performed by a minister of a church or a member of a religious order.
31.3401 (a) (10) Statutory provisions; definitions; wages; remuneration for services in the delivery or distribution of newspapers, shopping news, or magazines.
31.3401 (a) (10)-1 Remuneration for services in delivery or distribution of newspapers, shopping news, or magazines.
31.3401 (a) (11) Statutory provisions; definitions; wages; remuneration other than in cash for services not in the course of employer's trade or business.
31.3401 (a) (11)-1 Remuneration other than in cash for service not in the course of employer's trade or business.
31.3401 (a) (12) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3401 (a) (12)-1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3401 (b) Statutory provisions; definitions; payroll period.
31.3401 (b)-1 Payroll period.
31.3401 (c) Statutory provisions; definitions; employee.
31.3401 (c)-1 Employee.
31.3401 (d) Statutory provisions; definitions; employer.
31.3401 (d)-1 Employer.
31.3401 (e) Statutory provisions; definitions; number of withholding exemptions claimed.
31.3401 (e)-1 Number of withholding exemptions claimed.
31.3402 (a) Statutory provisions; income tax collected at source; requirement of withholding.
31.3402 (a)-1 Requirement of withholding.
31.3402 (b) Statutory provisions; income tax collected at source; percentage method of withholding.
31.3402 (b)-1 Percentage method of withholding.
31.3402 (c) Statutory provisions; income tax collected at source; wage bracket withholding.
31.3402 (c)-1 Wage bracket withholding.
31.3402 (d) Statutory provisions; income tax collected at source; tax paid by recipient.
31.3402 (d)-1 Failure to withhold.
31.3402 (e) Statutory provisions; income tax collected at source; included and excluded wages.
31.3402 (e)-1 Included and excluded wages.
31.3402 (f) (1) Statutory provisions; income tax collected at source; withholding exemptions.
31.3402 (f) (1)-1 Withholding exemptions.
31.3402 (f) (2) Statutory provisions; income tax collected at source; withholding exemptions; exemption certificates.
31.3402 (f). (2)-1 Withholding exemption certificates.
31.3402 (f) (3) Statutory provisions; income tax collected at source; withholding exemptions; when exemption certificate takes effect.
31.3402 (f) (3)-1 When withholding exemption certificate takes effect.
31.3402 (f) (4) Statutory provisions; income tax collected at source; withholding exemptions; period during which exemption certificate remains in effect.
31.3402 (f) (4)-1 Period during which withholding exemption certificate remains in effect.
31.3402 (f) (5) Statutory provisions; income tax collected at source; withholding exemptions; form and contents of exemption certificate.
31.3402 (f) (5)-1 Form and contents of withholding exemption certificate.
31.3402 (g) Statutory provisions; income tax collected at source; overlapping pay periods, and payment by agent or fiduciary.
31.3402 (g)-1 Supplemental wage payments.
31.3402 (g)-2 Wages paid for payroll period of more than one year.
31.3402 (g)-3 Wages paid through an agent, fiduciary, or other person on behalf of two or more employers.
31.3402 (h) Statutory provisions; income tax collected at source; withholding on basis of average wages.
31.3402 (h)-1 Withholding on basis of average wages.

Sec.
31.3402 (i) Statutory provisions; income tax collected at source; additional withholding.
31.3402 (i)–1 Additional withholding.
31.3402 (j) Statutory provisions; income tax collected at source; noncash remuneration to retail commission salesman.
31.3402 (j)–1 Remuneration other than in cash for service performed by retail commission salesman.
31.3403 Statutory provisions; liability for tax.
31.3403–1 Liability for tax.
31.3404 Statutory provisions; return and payment by governmental employer.
31.3404–1 Return and payment by governmental employer.

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

31.3501 Statutory provisions; collection and payment of taxes.
31.3502 Statutory provisions; nondeductibility of taxes in computing taxable income.
31.3502–1 Nondeductibility of taxes in computing taxable income.
31.3503 Statutory provisions; erroneous payments.
31.3503–1 Tax under chapter 21 or 22 paid under wrong chapter.
31.3504 Statutory provisions; acts to be performed by agents.
31.3504–1 Acts to be performed by agents.

Subpart G—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

31.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.
31.6001–1 Records in general.
31.6001–2 Additional records under Federal Insurance Contributions Act.
31.6001–3 Additional records under Railroad Retirement Tax Act.
31.6001–4 Additional records under Federal Unemployment Tax Act.
31.6001–5 Additional records in connection with collection of income tax at source on wages.
31.6001–6 Notice by district director requiring returns, statements, or the keeping of records.
31.6011(a) Statutory provisions; general requirement of return, statement, or list; general rule.
31.6011(a)–1 Returns under Federal Insurance Contributions Act.
31.6011(a)–2 Returns under Railroad Retirement Tax Act.
31.6011(a)–3 Returns under Federal Unemployment Tax Act.
31.6011(a)–4 Returns of income tax withheld from wages.
31.6011(a)–5 Monthly returns.
31.6011(a)–6 Final returns.
31.6011(a)–7 Execution of returns.
31.6011(b) Statutory provisions; identification of taxpayer.
31.6011(b)–1 Employers' identification numbers.
31.6011(b)–2 Employees' account numbers.
31.6051 Statutory provisions; receipts for employees.
31.6051–1 Statements for employees.
31.6061 Statutory provisions; signing of returns and other documents.
31.6061–1 Signing of returns.
31.6065(a) Statutory provisions; verification of returns.
31.6065(a)–1 Verification of returns or other documents.
31.6071(a) Statutory provisions; time for filing returns and other documents.
31.6071(a)–1 Time for filing returns and other documents.
31.6081(a) Statutory provisions; extension of time for filing returns.
31.6081(a)–1 Extensions of time for filing returns and other documents.
31.6091 Statutory provisions; place for filing returns.
31.6091–1 Place for filing returns.
31.6101 Statutory provisions; period covered by returns or other documents.
31.6101–1 Period covered by returns.
31.6151 Statutory provisions; time and place for paying tax shown on returns.
31.6151–1 Time for paying tax.
31.6161(a)(1) Statutory provisions; extension of time for paying tax.
31.6161(a)(1)–1 Extensions of time for paying tax.
31.6205 Statutory provisions; special rules applicable to certain employment taxes.
31.6205–1 Adjustments of underpayments.
31.6302(b) Statutory provisions; mode or time of collection; discretionary method.
31.6302(b)–1 Method of collection.
31.6302(c) Statutory provisions; mode or time of collection; use of Government depositaries.
31.6302(c)–1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.
31.6302(c)–2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.
31.6302(c)–3 Cross references.
31.6402(a) Statutory provisions; authority to make credits or refunds.
31.6402(a)–1 Credits or refunds.
31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.
31.6402(a)–3 Refund of Federal unemployment tax.
31.6404(a) Statutory provisions; abatements.
31.6404(a)–1 Abatements.
31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.
31.6413(a)–1 Repayment by employer of tax erroneously collected from employee.
31.6413(a)–2 Adjustment of overpayments.
31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.
31.6413(b)–1 Overpayments of certain employment taxes.
31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.
31.6413(c)–1 Special refunds.
31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.
31.6414 Statutory provisions; income tax withheld.
31.6414–1 Credit or refund of income tax withheld from wages.
31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.
31.6674–1 Penalties for fraudulent statement or failure to furnish statement.
31.7805 Statutory provisions; rules and regulations.
31.7805–1 Promulgation of regulations.

AUTHORITY: §§ 31.0–1 to 31.7805–1 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart A—Introduction

§ 31.0–1 Introduction.

(a) *In general.* The regulations in this part relate to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of the Internal Revenue Code of 1954, as amended. References in the regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, and the Federal Unemployment Tax Act are references to chapters 21, 22, and 23, respectively, of the Code. References to sections of law are references to sections of the Internal Revenue Code unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into 7 subparts. Subpart A contains provisions relating to general definitions and use of terms, the division and scope of the regulations in this part, and the extent to which the regulations in this part supersede prior regulations relating to employment taxes. Subpart B relates to the taxes under the Federal Insurance Contributions Act. Subpart C relates to the taxes under the Railroad Retirement Tax Act. Subpart D relates to the tax under the Federal Unemployment Tax Act. Subpart E relates to the collection of income tax at source on wages under chapter 24 of the Code. Subpart F relates to the provisions of chapter 25 of the Code which are applicable in respect of the taxes imposed by chapters 21 to 24, inclusive, of the Code. Subpart G relates to selected provisions of subtitle F of the Code, relating to procedure and administration, which have special application in respect of the taxes imposed by subtitle C of the Code. Inasmuch as these regulations constitute Part 31 of Title 26 of the Code of Federal Regulations, each section of the regulations is preceded by a section symbol and 31 followed by a decimal point (§ 31.). Sections of law or references thereto are preceded by "Sec." or the word "section".

§ 31.0–2 General definitions and use of terms.

(a) *In general.* As used in the regulations in this part, unless otherwise expressly indicated—

(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(2) The Internal Revenue Code of 1954 means the act approved August 16, 1954 (26 U.S.C.), entitled "An act to revise the internal revenue laws of the United States", as amended.

(3) The Internal Revenue Code of 1939 means the act approved February 10, 1939 (53 Stat., Part 1), as amended.

(4) The Social Security Act means the act approved August 14, 1935 (42 U.S.C. c. 7), as amended.

(5)(i) The Social Security Amendments of 1954 means the act approved September 1, 1954 (68 Stat. 1052), as amended.

(ii) The Social Security Amendments of 1956 means the act approved August 1, 1956 (70 Stat. 807, as amended).

(6) The Social Security Administration means the Social Security Administration of the Department of Health,

Education, and Welfare. (See the Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare (20 F. R. 1996).)

(7) District director means district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(8) Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(9) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

(10) Account number means the identifying number of an employee assigned, as the case may be, under the Internal Revenue Code of 1954, under subchapter A of chapter 9 of the Internal Revenue Code of 1939, or under title VIII of the Social Security Act.

(11) Identification number means the identifying number of an employer assigned, as the case may be, under the Internal Revenue Code of 1954, under subchapter A or D of chapter 9 of the Internal Revenue Code of 1939, or under title VIII of the Social Security Act.

(12) Regulations 90 means the regulations approved February 17, 1936 (26 CFR (1939) Part 400), as amended, relating to the excise tax on employers under title IX of the Social Security Act, and such regulations as made applicable to subchapter C of chapter 9 and other provisions of the Internal Revenue Code of 1939 by Treasury Decision 4885, approved February 11, 1939 (26 CFR (1939) 1943 Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code of 1939.

(13) Regulations 91 means the regulations approved November 9, 1936 (26 CFR (1939) Part 401), as amended, relating to the employees' tax and the employers' tax under title VIII of the Social Security Act, and such regulations as made applicable to subchapter A of chapter 9 and other provisions of the Internal Revenue Code of 1939 by Treasury Decision 4885, approved February 11, 1939 (26 CFR (1939) 1943 Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code of 1939.

(14) Regulations 106 means the regulations approved February 24, 1940 (26 CFR (1939) Part 402), as amended, relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1939 and before 1951.

(15) Regulations 107 means the regulations approved September 12, 1940 (26 CFR (1939) Part 403), as amended, relating to the excise tax on employers under the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1939 and before 1955.

(16) Regulations 114 means the regulations approved December 30, 1948 (26 CFR (1939) Part 411), as amended, relating to the employers' tax, employees' tax, and employee representatives' tax under the Railroad Retirement Tax Act (subchapter B of chapter 9 of the Internal Revenue Code of 1939) with respect to compensation paid after 1948 for services rendered after 1946 and before 1955.

(17) Regulations 120 means the regulations approved December 22, 1953 (26 CFR (1939) Part 406), as amended, relating to collection of income tax at source on wages under subchapter D of chapter 9 of the Internal Revenue Code of 1939 with respect to the period after 1953 and before 1955.

(18) Regulations 128 means the regulations approved December 6, 1951 (26 CFR (1939) Part 408), as amended, relating to the employee tax and the employer tax under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1950 and before 1955.

(19) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

(b) *Subpart B.* As used in Subpart B of this part, unless otherwise expressly indicated—

(1) Act means the Federal Insurance Contributions Act.

(2) Taxes means the employee tax and the employer tax, as respectively defined in this paragraph.

(3) Employee tax means the tax imposed by section 3101 of the Code.

(4) Employer tax means the tax imposed by section 3111 of the Code.

(c) *Subpart C.* As used in Subpart C of this part, unless otherwise expressly indicated—

(1) Act means the Railroad Retirement Tax Act.

(2) Railway Labor Act means the act approved May 20, 1926 (45 U.S.C. c. 8), as amended.

(3) Railroad Retirement Act of 1937 means the act approved June 24, 1937 (45 U.S.C. 228a and following), as amended.

(4) Railroad Retirement Board means the board established pursuant to section 10 of the Railroad Retirement Act of 1937 (45 U.S.C. 228j).

(5) Tax means the employee tax, the employee representative tax, or the employer tax, as respectively defined in this paragraph.

(6) Employee tax means the tax imposed by section 3201 of the Code.

(7) Employee representative tax means the tax imposed by section 3211 of the Code.

(8) Employer tax means the tax imposed by section 3221 of the Code.

(d) *Subpart D.* As used in Subpart D of this part, unless otherwise expressly indicated:

(1) Act means the Federal Unemployment Tax Act.

(2) Railroad Unemployment Insurance Act means the act approved June 25, 1938 (45 U.S.C. c. 11), as amended.

(3) Tax means the tax imposed by section 3301 of the Code.

(e) *Subpart E.* As used in Subpart E of this part, unless otherwise expressly indicated, tax means the tax required to be deducted and withheld from wages under section 3402 of the Code.

§ 31.0–3 Scope of regulations.

(a) *Subpart B.* The regulations in Subpart B of this part relate to the imposition of the employee tax and the employer tax under the Federal Insurance Contributions Act with respect to wages paid and received after 1954 for employment performed after 1936. In addition to employment in the case of remuneration therefor paid and received after 1954, the regulations in Subpart B of this part relate also to employment performed after 1954 in the case of remuneration therefor paid and received before 1955. The regulations in Subpart B of this part include provisions relating to the definition of terms applicable in the determination of the taxes under the Federal Insurance Contributions Act, such as "employee", "wages", and "employment". The provisions of Subpart B of this part relating to the definition of "employment" are applicable also, to the extent provided in § 31.3121 (b)–2, to services performed before 1955 the remuneration for which is paid after 1954. (For prior regulations on similar subject matter, see 26 CFR (1939) Part 408 (Regulations 128).)

(b) *Subpart C.* The regulations in Subpart C of this part relate to the imposition of the employee tax, the employee representative tax, and the employer tax under the Railroad Retirement Tax Act with respect to compensation paid after 1954, for services rendered after such date. The regulations in Subpart C of this part include provisions relating to the definition of terms applicable in the determination of the taxes under the Railroad Retirement Tax Act, such as "employee", "employee representative", "employer", and "compensation". (For prior regulations on similar subject matter, see 26 CFR (1939) Part 411 (Regulations 114).)

(c) *Subpart D.* The regulations in Subpart D of this part relate to the imposition on employers of the excise tax under the Federal Unemployment Tax Act for the calendar year 1955 and subsequent calendar years with respect to wages paid after 1954 for employment performed after 1938. In addition to employment in the case of remuneration therefor paid after 1954, the regulations in Subpart D of this part relate also to employment performed after 1954 in the case of remuneration therefor paid before 1955. The regulations in Subpart D of this part include provisions relating to the definition of terms applicable in the determination of the tax under the

Federal Unemployment Tax Act, such as "employee", "employer", "employment", and "wages". The regulations in Subpart D of this part also include provisions relating to the credits against the Federal tax for State contributions. (For prior regulations on similar subject matter, see 26 CFR (1939) Part 403 (Regulations 107).)

(d) *Subpart E.* The regulations in Subpart E of this part relate to the withholding under chapter 24 of the Code of income tax at source on wages paid after 1954, regardless of when such wages were earned. The regulations in Subpart E of this part include provisions relating to the definition of terms applicable in the determination of the tax under chapter 24 of the Code, such as "employee", "employer", and "wages". (For prior regulations on similar subject matter, see 26 CFR (1939) Part 406 (Regulations 120).)

(e) *Subpart F.* The regulations in Subpart F of this part deal with the general provisions contained in chapter 25 of the Code, which relate to the employment taxes imposed by chapters 21 to 24, inclusive, of the Code. (For prior regulations on the subject matter of section 3503, see 26 CFR (1939) 411.802 and 408.803 (Regulations 114 and 128, respectively). For prior regulations on the subject matter of section 3504, see 26 CFR (1939) 406.807 and 408.906 (Regulations 120 and 128, respectively).)

(f) *Subpart G.* The regulations in Subpart G of this part, which are prescribed under selected provisions of subtitle F of the Code, relate to the procedural and administrative requirements in respect of records, returns, deposits, payments, and related matters applicable to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of the Code. In addition, the provisions of Subpart G of this part relate to adjustments and to claims for refund, credit, or abatement, made after 1954, in connection with the employment taxes imposed by subtitle C of the Internal Revenue Code of 1954, by chapter 9 of the Internal Revenue Code of 1939, or by the corresponding provisions of prior law, but not to any adjustment reported, or credit taken, in whole or in part on any return or supplemental return filed on or before July 31, 1960. The provisions of Subpart G of this part also relate to deposits of taxes imposed by subchapter B of chapter 9 of the 1939 Code or by corresponding provisions of prior law with respect to compensation paid after 1954 for services rendered before 1955. For other administrative provisions which have application to the employment taxes imposed by subtitle C of the Code, see Part 301 of this chapter (Regulations on Procedure and Administration). (The administrative and procedural regulations applicable with respect to a particular employment tax for a prior period were combined with the substantive regulations relating to such tax for such period. For the regulations applicable to the respective taxes for prior periods, see paragraphs (a), (b), (c), and (d) of this section.)

§ 31.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede 26 CFR (1939) Parts 403, 406, 408, and 411 (Regulations 107, 120, 128, and 114, respectively). The Regulations on Monthly Returns and Payment of Employment Taxes (23 F.R. 5006) are also superseded.

Subpart B—Federal Insurance Contributions Act (Chapter 21, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

§ 31.3101 Statutory provisions; rate of tax.

SEC. 3101. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121 (a)) received by him with respect to employment (as defined in section 3121 (b))—

(1) With respect to wages received during the calendar years 1955 to 1959, both inclusive, the rate shall be 2 percent;

(2) With respect to wages received during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ percent;

(3) With respect to wages received during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 percent;

(4) With respect to wages received during the calendar years 1970 to 1974, both inclusive, the rate shall be 3½ percent;

(5) With respect to wages received after December 31, 1974, the rate shall be 4 percent.

[Sec. 3101 as amended by sec. 208 (b), Social Security Amendments 1954]

§ 31.3101–1 Measure of employee tax.

The employee tax is measured by the amount of wages received after 1954 with respect to employment after 1936. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, inclusive, relating to wages; and §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive, relating to employment. For provisions relating to the time of receipt of wages, see § 31.3121 (a)–2.

§ 31.3101–2 Rates and computation of employee tax.

(a) The rates of employee tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1955 to 1959, both inclusive	2
For the calendar years 1960 to 1964, both inclusive	2½
For the calendar years 1965 to 1969, both inclusive	3
For the calendar years 1970 to 1974, both inclusive	3½
For the calendar year 1975 and subsequent calendar years	4

(b) The employee tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. In 1953 employee A performed for employer X services which constituted employment (see § 31.3121 (b)–2). In 1955, A receives from X $1,000 as remuneration for such services. The tax is payable at the 2 percent rate in effect for the calendar year 1955 (the year in which the wages are received) and not at the 1½ percent rate which was in effect for the calendar year 1953 (the year in which the services were performed).

§ 31.3101–3 When employee tax attaches.

The employee tax attaches at the time that the wages are received by the employee. For provisions relating to the time of such receipt, see § 31.3121 (a)–2.

§ 31.3102 Statutory provisions; deduction of tax from wages.

SEC. 3102. *Deduction of tax from wages*—(a) *Requirement.* The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7) (B) or (C) or (10) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8) (B) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100.

(b) *Indemnification of employer.* Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

[Sec. 3102 as amended by sec. 205 A, Social Security Amendments 1954]

§ 31.3102–1 Collection of, and liability for, employee tax.

(a) The employer shall collect from each of his employees the employee tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from such wages as and when paid. (For provisions relating to the time of such payment, see § 31.3121(a)–2.) The employer is required to collect the tax, notwithstanding the wages are paid in something other than money, and to pay over the tax in money. (As to the exclusion from wages of remuneration paid in any medium other than cash for certain types of services, see § 31.3121(a) (7)–1, relating to such remuneration paid for service not in the course of the employer's trade or business or for domestic service in a private home of the employer; and § 31.3121 (a) (8)–1, relating to such remuneration paid for agricultural labor.)

(b) The employer may deduct amounts equivalent to employee tax from payments to an employee of cash remuneration to which the sections referred to in this paragraph are applicable prior to the time that the sum of such payments equals:

(1) $50 in the calendar quarter, for service not in the course of the employer's trade or business, to which § 31.3121 (a) (7)–1 is applicable; or

(2) $50 in the calendar quarter, for domestic service in a private home of the employer, to which § 31.3121 (a) (7)–1 is applicable; or

(3) $100 in the calendar year, for agricultural labor, to which § 31.3121 (a) (8)–1 is applicable; or

(4) $50 in the calendar quarter, for service performed as a home worker, to which § 31.3121 (a) (10)–1 is applicable. At such time as the sum of the cash payments in the calendar quarter or the calendar year, as the case may be, for a type of service referred to in this paragraph equals or exceeds the amount specified, the employer is required to collect from the employee any amount of employee tax not previously deducted. If an employer pays cash remuneration to an employee for two or more of the types of service referred to in this paragraph, the provisions of this paragraph are to be applied separately to the amount of remuneration attributable to each type of service. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1. The application of this paragraph may be illustrated by the following examples:

Example (1). In the calendar year 1955 employer X makes several payments of cash remuneration to employee A for agricultural labor which constitutes employment. In January employer X makes his first payment of such cash remuneration to employee A in the amount of $10. X deducts 20 cents (2 percent of $10) as an amount equivalent to employee tax. In June X makes his second payment of cash remuneration to A in the amount of $50. X does not deduct from this payment an amount equivalent to employee tax. In October X makes his third payment of cash remuneration to A in the amount of $40. This amount brings the sum of such payments in 1955 to $100, and X is now required to collect employee tax from A. The amount of employee tax applicable to the $100 so paid is $2 (2 percent of $100). Inasmuch as X previously deducted 20 cents in January 1955, X is required to deduct $1.80 ($2 minus 20 cents) from the $40 paid in October 1955.

Example (2). Assume the same facts as in example (1), and assume further that employer X deducted $1.80 from the October payment to employee A. In November 1955, X makes his next payment of cash remuneration to A in the amount of $10. X is required to deduct 20 cents (2 percent of $10) from such payment.

(c) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the district director.

§ 31.3102–2 Manner and time of payment of employee tax.

The employee tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part.

TAX ON EMPLOYERS

§ 31.3111 Statutory provisions; rate of tax.

SEC. 3111. *Rate of tax.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121 (a)) paid by him with respect to employment (as defined in section 3121 (b))—

(1) With respect to wages paid during the calendar years 1955 to 1959, both inclusive, the rate shall be 2 percent;

(2) With respect to wages paid during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ percent;

(3) With respect to wages paid during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 percent;

(4) With respect to wages paid during the calendar years 1970 to 1974, both inclusive, the rate shall be 3½ percent;

(5) With respect to wages paid after December 31, 1974, the rate shall be 4 percent. [Sec. 3111 as amended by sec. 208 (c), Social Security Amendments 1954]

§ 31.3111–1 Measure of employer tax.

The employer tax is measured by the amount of wages paid after 1954 with respect to employment after 1936. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, inclusive, relating to wages, and §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive, relating to employment. For provisions relating to time of payment of wages, see § 31.3121 (a)–2.

§ 31.3111–2 Rates and computation of employer tax.

(a) The rates of employer tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1955 to 1959, both inclusive	2
For the calendar years 1960 to 1964, both inclusive	2½
For the calendar years 1965 to 1969, both inclusive	3
For the calendar years 1970 to 1974, both inclusive	3½
For the calendar year 1975 and subsequent calendar years	4

(b) The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

§ 31.3111–3 When employer tax attaches.

The employer tax attaches at the time that the wages are paid by the employer. For provisions relating to the time of such payment, see § 31.3121(a)–2.

§ 31.3111–4 Liability for employer tax.

The employer is liable for the employer tax with respect to the wages paid to his employees for employment performed for him.

§ 31.3111–5 Manner and time of payment of employer tax.

The employer tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part.

§ 31.3112 Statutory provisions; instrumentalities of the United States.

SEC. 3112. *Instrumentalities of the United States.* Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

§ 31.3112–1 Instrumentalities of the United States specifically exempted from the employer tax.

Section 3112 makes ineffectual as to the employer tax imposed by section 3111 those provisions of law which grant to an instrumentality of the United States an exemption from taxation, unless such provisions grant a specific exemption from the tax imposed by section 3111 by an express reference to such section or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939). Thus, the general exemptions from Federal taxation granted by various statutes to certain instrumentalities of the United States without specific reference to the tax imposed by section 3111 or by section 1410 of the 1939 Code are rendered inoperative insofar as such exemptions relate to the tax imposed by section 3111. For provisions relating to the exception from employment of services performed in the employ of an instrumentality of the United States specifically exempted from the employer tax, see § 31.3121 (b) (5)–1. For provisions relating to services performed for an instrumentality exempt on December 31, 1950, from the employer tax, see paragraph (c) of § 31.3121 (b) (6)–1.

GENERAL PROVISIONS

§ 31.3121(a) Statutory provisions; definitions; wages.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

§ 31.3121(a)–1 Wages.

(a) Whether remuneration paid after 1954 for employment performed after 1936 constitutes wages is determined under section 3121(a). This section and §§ 31.3121(a)(1)–1 to 31.3121(a)(10)–1, inclusive (relating to the statutory exclusions from wages), apply with respect only to remuneration paid after 1954 for employment performed after 1936. Whether remuneration paid after 1936 and before 1940 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 401 (Regulations 91). Whether remuneration paid after 1939 and before 1951 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 402 (Regulations 106).

Whether remuneration paid after 1950 and before 1955 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 408 (Regulations 128).

(b) The term "wages" means all remuneration for employment unless specifically excepted under section 3121 (a) (see §§ 31.3121 (a) (1)–1 to 31.3121 (a) (10)–1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. See, however, §§ 31.3121 (a) (7)–1, 31.3121 (a) (8)–1, and 31.3121 (a) (10)–1, relating to the treatment of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business and for domestic service in a private home of the employer, for agricultural labor, and for services performed by certain home workers, respectively.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(i) Remuneration for employment, unless such remuneration is specifically excepted under section 3121 (a) or paragraph (j) of this section, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by B during the month of January 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1955. On February 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages and the taxes are payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3121 (a) (1)–1 to 31.3121 (a) (10)–1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3121 (b) (see §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive) and which are not deemed to be employment under section 3121 (c) (see § 31.3121 (c)–1).

(2) Remuneration for services which are deemed not to be employment under section 3121 (c) (see § 31.3121 (c)–1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

§ 31.3121 (a)–2 Wages; when paid and received.

(a) In general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless under paragraph (c) of this section they are deemed to be subsequently paid.

(b) Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3123–1.

(c) (1) The first $50 of cash remuneration paid, either actually or constructively, by an employer to an employee in a calendar quarter for—

(i) Service to which § 31.3121 (a) (7)–1 is applicable (service not in the course of the employer's trade or business and domestic service in a private home of the employer); or

(ii) Service to which § 31.3121 (a) (10)–1 is applicable (service performed by certain home workers),

shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar quarter that the sum of such cash payments made within such quarter is at least $50.

(2) The first $100 of cash remuneration paid, either actually or constructively, by an employer to an employee in a calendar year for agricultural labor to which § 31.3121 (a) (8)–1 is applicable shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least $100.

(3) If an employer pays cash remuneration to an employee for two or more of the types of service referred to in this paragraph, the provisions of this paragraph are to be applied separately to the amount of remuneration attributable to each type of service.

§ 31.3121 (a) (1) Statutory provisions; definitions; wages; $4,200 limitation.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $4,200 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $4,200 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

[Sec. 3121 (a) (1) as amended by sec. 204 (a) Social Security Amendments 1954]

§ 31.3121 (a) (1)–1 $4,200 limitation.

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year after 1954 by an employer to an employee which exceeds the first $4,200 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121 (a)–1 or §§ 31.3121 (a) (2)–1 to 31.3121 (a) (10)–1, inclusive) paid within such calendar year by such employer to such employee for employment performed for him at any time after 1936.

(2) The $4,200 limitation applies only if the remuneration received during any one calendar year by an employee from the same employer for employment performed after 1936 exceeds $4,200. The limitation in such case relates to the amount of remuneration received during any one calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employee A, in 1955, receives $3,500 from employer B on account of $4,000 due him for employment performed in 1955. In 1956 A receives from employer B the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also receives $4,000 for employment performed in 1956 for employer B. The $3,500 received in 1955 is subject to the taxes in 1955. The balance of $500 received in 1956 for employment during 1955 is subject to the taxes in 1956, as is also the first $3,700 paid of the $4,000 for employment during 1956 (this $500 for 1955 employment added to the first $3,700 paid for 1956 employment constitutes the maximum wages which could be received by A in 1956 from any one employer). The final $300 received by A from B in 1956 is not included as wages and is not subject to the taxes.

(3) If during a calendar year the employee receives remuneration from more than one employer, the limitation of wages to the first $4,200 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment performed after 1936, but instead to the remuneration received during such calendar year from each employer with respect to employment performed after 1936. In such case the first $4,200 received during the calendar year from each employer constitutes wages and is subject to the taxes, even though, under section 6413 (c), the employee may be entitled to a special credit or refund of any amount of employee tax deducted from his wages which exceeds the employee tax with respect to the first $4,200 of wages received during the calendar year from all employers. In this connection and in connection with the two examples immediately following, see § 31.6413 (c)–1, relating to special credits or refunds of employee tax on wages over $4,200. In connection with the application of the $4,200 limitation on wages in the case of remuneration paid for services performed in the employ of the United States or a wholly owned instrumentality thereof, see § 31.3122. In connection with the application of the $4,200 limitation, see also paragraph (b) of this section, relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

Example (1). During 1955 employee C receives from employer D a salary of $700 a month for employment performed for D during the first 7 months of 1955, or total remuneration of $4,900. At the end of the sixth month C has received $4,200 from employer D, and only that part of his total remuneration from D constitutes wages subject to the taxes. The $700 received by employee C from employer D in the seventh month is not included as wages and is not subject to the taxes. At the end of the seventh month C leaves the employ of D and enters the employ of E. C receives remuneration of $840 a month from employer E in each of the remaining 5 months of 1955, or total remuneration of $4,200 from employer E. The entire $4,200 received by C from employer E constitutes wages and is subject to the taxes. Thus, the first $4,200 received from employer D and the entire $4,200 received from employer E constitute wages.

Example (2). During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation and during such year receives a salary of $4,200 from each corporation. Each $4,200 received by F from each of the Corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the taxes.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $4,200 limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121 (a)–1 or §§ 31.3121 (a) (2)–1 to 31.3121 (a) (10)–1, inclusive) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor.

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $4,200 limitation, be treated as having been paid to such employee by a successor, if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operation to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1955 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. The X Company has in 1955 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,500 of wages to A. The Y Corporation in 1955 pays to A remuneration with respect to employment of $2,500. Only $1,700 of the remuneration paid by the Y Corporation is considered to be wages. For purposes of the $4,200 limitation, the Y Corporation is credited with the $2,500 paid to A by the X Company. If, in the same calendar year, the property is acquired by the Z Company from the Y Corporation and A immediately after the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $4,200 limitation as having also been paid by the Y Corporation).

(6) Where a corporation described in section 501 (c) (3) which is exempt from income tax under section 501 (a) has in effect a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, waiving its exemption from the taxes imposed by the Act, the activity in which such corporation is engaged is consid-

ered to be its trade or business for the purpose of determining whether the transferred property was used in the trade or business of the predecessor and for the purpose of determining whether the employment by the predecessor and the successor of an individual whose services were retained by the successor constitute employment in a trade or business. Thus, if a charitable or religious organization, subject to the taxes by virtue of its certificate, acquires all the property of another such organization likewise subject to the taxes and retains the services of employees of the predecessor, wages paid to such employees by the predecessor in the year of the acquisition (and prior to such acquisition) will be attributed to the successor for purposes of the $4,200 limitation.

§ 31.3121(a)(2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

§ 31.3121(a)(2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

(a) The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

§ 31.3121(a)(3) Statutory provisions; definitions; wages; retirement payments.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

§ 31.3121(a)(3)–1 Retirement payments.

The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3121(a)(4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

§ 31.3121(a)(4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.

The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3121(a)(5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6);

§ 31.3121(a)(5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

§ 31.3121(a)(6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(6) The payment by an employer (without deduction from the remuneration of the employee)—

(A) Of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) Of any payment required from an employee under a State unemployment compensation law;

§ 31.3121(a)(6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3121(a)(7) Statutory provisions; definitions; wages; payments for service not in the course of the employer's trade or business or for domestic service.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(7) (A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (g) (5);

(C) Cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g) (5);

[Sec. 3121 (a) (7) as amended by sec. 204 (b) (1), (2), Social Security Amendments 1954]

§ 31.3121(a)(7)–1 Payments for services not in the course of employer's trade or business or for domestic service.

(a) *Meaning of terms*—(1) *Services not in the course of employer's trade or business.* The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Such term does not include services performed for a corporation. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home of the employer. See paragraph (f) of § 31.3121 (g)–1 for provisions relating to services not in the course of the employer's trade or business performed on a farm operated for profit.

(2) *Domestic service in a private home of the employer.* Services of a household nature performed by an employee in or about a private home of the person by whom he is employed constitute domestic service in a private home of the employer. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The term "domestic service in a private home of the employer" does not include the services enumerated above unless such services are performed in or about a private home of the employer. Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's home, are not included within the term "domestic service in a private home of the employer". As used in this section, the term does not include domestic service in a private home of the employer performed on a farm operated for profit or service not in the course of the employer's trade or business. See paragraph (f) § 31.3121 (g)–1 for provisions relating to domestic service in a private home of the employer performed on a farm operated for profit.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash (1) for service not in the course of the employer's trade or business, or (2) for domestic service in a private home of the employer. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, for service not in the course of the employer's trade or business or for domestic service in a private home of the employer does not constitute wages.

(c) *Cash payments.* (1) The term "wages" does not include cash remuneration paid by an employer in any calendar quarter after 1954 to an employee for—

(i) Domestic service in a private home of the employer, or

(ii) Service not in the course of the employer's trade or business,

unless the cash remuneration paid in such quarter by the employer to the employee for such service is $50 or more.

(2) The test relating to cash remuneration of $50 or more is based on the remuneration paid in a calendar quarter rather than on the remuneration earned during a calendar quarter. It is immaterial whether the remuneration was earned before 1955 or after 1954.

Example. In the calendar quarter ending March 31, 1955, employer X pays employee A cash remuneration of $50 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though $10 thereof represents payment for such service performed by A for X in December 1954.

In determining whether $50 or more has been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar quarter for both types of services the $50 cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar quarter for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the $50 cash-remuneration test is to be applied separately to the remuneration received from each employer. See § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the services described in this section; § 31.3121 (a)–2, relating to time of payment of wages for such services; and § 31.3121 (i)–1, relating to computation to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer.

§ 31.3121(a)(8) Statutory provisions; definitions; wages; payments for agricultural labor.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(8) (A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor, if the cash remuneration paid in such year by the employer to the employee for such labor is less than $100;

[Sec. 3121 (a) (8) as amended by sec. 204 (b) (3), Social Security Amendments 1954]

§ 31.3121(a)(8)–1 Payments for agricultural labor.

(a) *Scope of this section.* For purposes of the regulations in this section, the term "agricultural labor" means, except as otherwise expressly indicated, only such agricultural labor (see § 31.3121(g)–1) as constitutes employment or is deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.3121(c)–1) or the corresponding section of prior law.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash for agricultural labor. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities, for agricultural labor does not constitute wages.

(c) *Cash payments.* (1) The term "wages" does not include cash remuneration paid by an employer in any calendar year after 1954 to an employee for agricultural labor unless the cash remuneration paid in such year by the employer to the employee for such labor is $100 or more. If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether the cash-remuneration test is met.

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In the calendar year 1955, X pays A $90 in cash for agricultural labor performed on X's farm and $1,500 for services performed in connection with the operation of the store. Since only $90 in cash remuneration is paid by X to A in the calendar year 1955 for agricultural labor, the cash-remuneration test is not met and the $90 so paid to A does not constitute wages subject to the taxes.

(2) The test relating to cash remuneration of $100 or more is based on the remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial whether the remuneration was earned before 1955 or after 1954.

Example. Employer X pays cash remuneration of $100 in the calendar year 1955 to employee A for agricultural labor. Such remuneration constitutes wages even though $10 of such amount represents payment for agricultural labor performed by A for X in December 1954.

(3) If the services performed by an employee for his employer in any pay period include both agricultural labor and other services and either the agricultural labor or the other services are excepted from employment under any of the numbered paragraphs of section 3121 (b), the rules in § 31.3121 (c)–1, relating to included and excluded services, must be applied to the services performed in such pay period. Thus, any cash remuneration paid for agricultural labor which is performed in the pay period and which is deemed to be employment under the included-excluded rules must be taken into account in determining whether the cash remuneration paid to the employee for agricultural labor meets the $100 cash-remuneration test.

Example. Employer X, who is engaged in farm operations and also in the harvesting of crude gum (oleoresin) from living trees, employs A to perform services in connection with both types of operations. X pays A cash remuneration of $135 in the calendar year 1955 in 3 equal monthly payments of $45 each for such services. A spends more than one-half of his time in the first monthly pay period in harvesting crude gum and more than one-half of his time in the second and third pay periods in cultivating the soil. While both types of services performed by A for X constitute agricultural labor as defined in section 3121 (g), A's services in connection with the cultivation of the soil constitute employment and his services in connection with the harvesting of crude gum are excepted from employment under section 3121 (b) (1) (see paragraph (a) of § 31.3121 (b) (1)–1. By application of the rules relating to included and excluded services, none of A's services in the first pay period are deemed to constitute employment and the $45 paid for his services in such pay period is disregarded for purposes of the $100 cash-remuneration test. Although all of A's services in the second and third pay periods are deemed to constitute employment by application of the included-excluded rules, the $90 paid by X to A for his services in such periods does not constitute wages subject to the taxes since the total cash remuneration paid to A by X in the calendar year for agricultural labor which constitutes or is deemed to constitute employment is less than $100.

(4) In determining whether $100 or more has been paid to an employee for agricultural labor, only cash remuneration for such labor shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration in any one calendar year from more than one employer for agricultural labor, the $100 cash-remuneration test is to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such labor. See § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for agricultural labor, and § 31.3121 (a)–2, relating to the time of payment of wages for agricultural labor.

§ 31.3121(a)(9) Statutory provisions; definitions; wages; payments to stand-by employees.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(9) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made; or

§ 31.3121(a)(9)–1 Payments to stand-by employees.

The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if—

(a) Such employee does no work (other than being subject to call for the performance of work) for such employer in the period for which such payment is made; and

(b) The employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A, who attained the age of 65 in January 1955, is employed by the X Company on a stand-by basis and is paid $200 by the X Company for being subject to call during the month of February 1955 and an additional $25 for work performed for the X Company on one day in February 1955, then none of the $225 is excluded from wages under this exception.

§ 31.3121(a)(10) Statutory provisions; definitions; wages; payments to certain home workers.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(10) Remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d) (3) (C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50.

§ 31.3121(a)(10)–1 Payments to certain home workers.

(a) The term "wages" does not include remuneration paid by an employer in any calendar quarter to an employee—

(1) For services performed after 1954 as a home worker who is an employee by reason of the provisions of section 3121 (d) (3) (C) (see paragraph (d) of § 31.3121(d)–1), or

(2) For services performed after 1950 and before 1955 as a home worker who is an employee by reason of the provisions of section 1426 (d) (3) (C) of the Internal Revenue Code of 1939,

unless the cash remuneration paid in such quarter by the employer to the employee for such services is $50 or more. The test relating to cash remuneration of $50 or more is based on remuneration paid in a calendar quarter rather than on remuneration earned during a calendar quarter. If $50 or more of cash remuneration is paid in a particular calendar quarter, it is immaterial whether the $50 is in payment for services performed during the quarter of payment or during any other quarter.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A, a home worker, performs services for X, a manufacturer, in 1954 and 1955. In the performance of the home work A is an employee both in 1954 (by reason of section 1426 (d) (3) (C) of the 1939 Code) and in 1955 (by reason of section 3121 (d) (3) (C)). In March 1955, A returns to X articles made by A at home from materials received by A from X in 1954. X pays A cash remuneration of $50 for such work when the

finished articles are delivered. The $50 includes $10 which represents remuneration for home work performed by A in 1954. The entire $50 is subject to the taxes.

Example (2). Assume that the same transactions occur, but that A is not subject in 1954 to licensing requirements under the laws of the State in which the home work is performed. A, therefore, does not perform home work in 1954 as an employee of X by reason of section 1426 (d) (3) (C) of the 1939 Code, and the $10 paid in 1955 for such work is not remuneration for employment. The remaining $40 for the home work performed in 1955 is remuneration for employment, but is excluded from wages by application of the $50 cash-remuneration test.

(c) In the event an employee receives remuneration in any one calendar quarter from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar quarter for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under either section 3121 (d) (2) (see paragraph (c) of § 31.3121(d)–1) or section 1426 (d) (2) of the 1939 Code, relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the $50 cash-remuneration test is met. If the cash remuneration paid in any calendar quarter by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is $50 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar quarter for such services is excluded from wages under this exception.

(e) For provisions relating to whether a home worker is an employee under section 1426 (d) (3) (C) of the 1939 Code, see § 408.204 of Regulations 128; 26 CFR (1939) Part 408. See also § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker of the character described in paragraph (a) of this section, and § 31.3121(a)–2, relating to the time of payment of wages for such services.

§ 31.3121(b) Statutory provisions; definitions; employment.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include—

• • • • •

[SEC. 205. *Amendments to definition of employment* [Social Security Amendments of 1954]. (a) Section 3121 (b) (1) of the Internal Revenue Code of 1954 is amended to read as follows:

(1) (A) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550 § 3; 12 U. S. C. 1141j);

(B) Service performed by foreign agricultural workers (i) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U. S. C. 1461–1468), or (ii) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies on a temporary basis to perform agricultural labor;

(b) Section 3121 (b) of the Internal Revenue Code of 1954 is amended by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14), and any references thereto contained in such code, as paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively.

• • • • •

(f) • • • The amendments made by subsections (a) and (b) shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954.]

§ 31.3121(b)–1 Employment; services to which the regulations in this subpart apply.

(a) The provisions of the regulations in this subpart relating to the term "employment" apply with respect to services performed after 1954. Certain provisions also apply with respect to services performed before 1955 for which the remuneration is paid after 1954 (see paragraph (b) of § 31.3121(b)–2). For provisions relating generally to services performed before 1955, see paragraph (a) of § 31.3121 (b)–2. For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3121 (c)–1. For provisions relating to who are employees and who are employers, see §§ 31.3121 (d)–1 and 31.3121 (d)–2, respectively.

(b) The taxes apply with respect to remuneration paid after 1954 for services performed before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, relating to wages.

§ 31.3121(b)–2 Employment; services performed before 1955.

(a) *General rule.* (1) Subject to the provisions of paragraph (b) of this section:

(i) Services performed after 1936 and before 1955 which were employment under the applicable law in effect before 1955 constitute employment under section 3121 (b).

(ii) Services performed after 1936 and before 1955 which were not employment under the applicable law in effect before 1955 do not constitute employment under section 3121 (b).

(2) Except as provided in paragraph (b) of this section, determination of whether services performed before 1955 constitute employment shall be made in accordance with the applicable provisions of law in effect before 1955 and of the regulations thereunder. The regulations applicable in determining whether services performed after 1936 and before 1955 constitute employment are as follows:

(i) Services performed after 1936 and before 1940—26 CFR (1939) Part 401 (Regulations 91).

(ii) Services performed after 1939 and before 1951—26 CFR (1939) Part 402 (Regulations 106).

(iii) Services performed after 1950 and before 1955—26 CFR (1939) Part 408 (Regulations 128).

(b) *Certain services performed before 1955 the remuneration for which is paid after 1954.* (1) Services of the following character performed before 1955, for which remuneration is paid after 1954, constitute employment under section 3121 (b):

(i) Agricultural labor, as defined in section 3121 (g) (see § 31.3121 (g)–1), other than services of the character described in section 3121 (b) (1) (relating to services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers), which, at the time performed, constituted employment under section 1426 (b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426 (b) (1) of such Code, as in effect at the time the services were performed.

(ii) Services not in the course of the employers' trade or business (see paragraph (a) (1) of § 31.3121 (a) (7)–1) which, at the time performed, constituted employment under section 1426 (b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426 (b) (3) of such Code, as in effect at the time the services were performed.

(2) Services of the character described in section 3121 (b) (1) (B) (see paragraphs (b) and (c) of § 31.3121(b) (1)–1, relating to services performed by certain foreign agricultural workers), which were performed before 1955 and the remuneration for which is paid after 1954, do not constitute employment under section 3121 (b), irrespective of whether they constituted employment under section 1426 (b) of the 1939 Code, as in effect at the time the services were performed.

(3) This paragraph has no application to services performed before 1955 and the remuneration for which was paid before 1955.

§ 31.3121(b)–3 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined in accordance with the provisions of section 3121(b).

(b) *Services performed within the United States.* Services performed after 1954 within the United States, that is, within any of the several States, the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico, by an employee for his employer, unless specifically excepted by section 3121 (b), constitute employment. The place where the contract of service is entered into and the residence of the employee or of the employer are immaterial. The citizenship of the employee or of the employer also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the employer may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States*—(1) *In general.* Except as provided in subparagraphs (2) and (3) of this paragraph, services performed outside the United States, that is, outside the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico, do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) Services performed after 1954 by an employee for an employer "on or in connection with" an American vessel or American aircraft outside the United States (that is, the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico) constitute employment if:

(*a*) The employee is also employed "on and in connection with" such vessel or aircraft when outside the United States; and

(*b*) The services are performed under a contract of service, between the employee and the employer, which is entered into within the United States; or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(*c*) The services are not excepted under section 3121 (b).

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on such vessel or aircraft which are also in connection with the vessel or aircraft. Services performed on the vessel by employees as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(iii) If services are performed by an employee "on and in connection with" an American vessel or American aircraft when outside the United States and the conditions listed in subdivision (i) (*b*) and (*c*) of this subparagraph are met, then the services of that employee performed on or in connection with the vessel or aircraft constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or aircraft it does not touch at a port within the United States, do not constitute employment under this subparagraph, notwithstanding services performed by other members of the crew or other employees on or in connection with the vessel or aircraft may constitute employment.

(v) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. An aircraft includes every description of craft, or other contrivance, used as a means of transportation through the air. In the case of an aircraft, the term "port" means an airport. An airport means an area on land or water used regularly by aircraft for receiving or discharging passengers or cargo. For definitions of "American vessel" and "American aircraft", see § 31.3121 (f)–1.

(vi) With respect to services performed outside the United States on or in connection with an American vessel or American aircraft, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the employer is material only in case it has a bearing in determining whether a vessel is an American vessel.

(3) *By a citizen of the United States as an employee for an American employer.* Services performed after 1954 outside the United States by a citizen of the United States as an employee for an American employer constitute employment provided the services are not specifically excepted under section 3121 (b). For definitions of "citizen of the United States" and "American employer", see §§ 31.3121 (e)–1 and 31.3121 (h)–1, respectively.

(4) *By a citizen of the United States as an employee for a foreign subsidiary corporation.* For provisions relating to the extension of the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services not constituting employment which are performed outside the United States by citizens of the United States in the employ of a foreign subsidiary of a domestic corporation, see section 3121(1) and Part 36 of this chapter (Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries).

§ 31.3121(b)–4 Employment; excepted services in general.

(a) Services performed after 1954 by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b). Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American employer.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services in an excepted class rendered by the employee.

Example. A is an individual who is employed part time by B to perform services which are specifically excepted from employment under one of the numbered paragraphs of section 3121 (b). A is also employed by C part time to perform services which constitute employment. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted from employment), the exception does not embrace the services performed by A in the employ of C (which constitute employment) and the taxes attach with respect to the wages (see § 31.3121 (a)–1) for such services.

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3121 (c)–1.

§ 31.3121(b)(1) Statutory provisions; definitions; employment; agricultural services.

SEC. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

(1) (A) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550 § 3; 12 U. S. C. 1141j);

(B) Service performed by foreign agricultural workers (i) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U. S. C. 1461–1468), or (ii) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West

Indies on a temporary basis to perform agricultural labor;

[Sec. 3121 (b) (1), as amended, effective with respect to services (performed after 1954 or before 1955) the remuneration for which is paid after 1954, by sec. 205 (a), Social Security Amendments 1954]

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. • • •

(g) As used in this Act, the term "agricultural commodity" includes • • • crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [*The Naval Stores Act.*] That, when used in this Act—

• • • • •

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

• • • • •

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

• • • • •

SEC. 501. [*Title V, Agricultural Act of 1949.*] For the purpose of assisting in such production of agricultural commodities and products as the Secretary of Agriculture deems necessary, by supplying agricultural workers from the Republic of Mexico (pursuant to arrangements between the United States and the Republic of Mexico), the Secretary of Labor is authorized—

(1) To recruit such workers (including any such workers who have resided in the United States for the preceding five years, or who are temporarily in the United States under legal entry);

• • • • •

(5) To assist such workers and employers in negotiating contracts for agricultural employment (such workers being free to accept or decline agricultural employment with any eligible employer and to choose the type of agricultural employment they desire, and eligible employers being free to offer agricultural employment to any workers of their choice not under contract to other employers);

• • • • •

SEC. 507. [*Title V, Agricultural Act of 1949.*] For the purposes of this title—

(1) The term "agricultural employment" includes services or activities included within the provisions of section 3 (f) of the Fair Labor Standards Act of 1938, as amended [52 Stat. 1060; 29 U. S. C. 203 (f)], or section 1426 (h) of the Internal Revenue Code as amended [section 3121 (g) of the Internal Revenue Code of 1954], horticultural employment, cotton ginning, compressing and storing, crushing of oil seeds, and the packing, canning, freezing, drying, or other processing of perishable or seasonable agricultural products.

• • • • •

SEC. 509. [*Title V, Agricultural Act of 1949.*] No workers will be made available under this title for employment after June 30, 1959.

[Sec. 509 as amended by Act of Aug. 9, 1955, 69 Stat. 615]

SEC. 3. *Definitions* [*Fair Labor Standards Act of 1938*]. As used in this Act—

• • • • •

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

• • • • •

§ 31.3121(b)(1)–1 Services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers.

(a) Services performed in connection with the production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum, are excepted from employment. However, the services to which this paragraph relates constitute agricultural labor as defined in section 3121(g) (see paragraph (d) of § 31.3121 (g)–1). Thus, any cash remuneration paid for such services, to the extent that the services are deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.-3121(c)–1), is taken into account in applying the test prescribed in section 3121(a)(8)(B) for determining whether cash remuneration paid for agricultural labor constitutes wages (see paragraph (c) of § 31.3121(a)(8)–1).

(b) Services performed by foreign agricultural workers from the Republic of Mexico under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, are excepted from employment. Contracts entered into pursuant to the provisions of such title V may provide for the performance only of services which constitute "agricultural employment". The term "agricultural employment" includes certain services which do not constitute "agricultural labor" as that term is defined in section 3121 (g) (see § 31.3121 (g)–1). For purposes of title V of the Agricultural Act of 1949, as amended, the term "agricultural employment" includes services or activities included within the provisions of section 3 (f) of the Fair Labor Standards Act of 1938, as amended, or section 3121 (g) of the Internal Revenue Code, horticultural employment, cotton ginning, compressing and storing, crushing of oil seeds, and the packing, canning, freezing, drying, or other processing of perishable or seasonable agricultural products.

(c) Services performed by a foreign agricultural worker lawfully admitted to the United States from the Bahamas, Jamaica, or the other British West Indies, on a temporary basis to perform agricultural labor are excepted from employment.

(d) See paragraph (b) of § 31.3121 (b)–2 for provisions relating to the status of services of the character to which this section applies which were performed before 1955 and the remuneration for which is paid after 1954.

§ 31.3121(b)(2) Statutory provisions; definitions; employment; domestic service performed by students for certain college organizations.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

§ 31.3121(b)(2)–1 Domestic service performed by students for certain college organizations.

(a) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For purposes of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(b) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

(f) For provisions relating to domestic service in a private home of the employer, see § 31.3121 (a) (7)–1.

§ 31.3121(b)(3) Statutory provisions; definitions; employment; family employment.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(3) Service performed by an individual in the employ of his son, daughter, or spouse,

and service performed by a child under the age of 21 in the employ of his father or mother;

[Sec. 3121 (b) (4), Internal Revenue Code 1954 redesignated paragraph (3) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(3)–1 Family employment.

(a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

§ 31.3121(b)(4) Statutory provisions; definitions; employment; services performed on or in connection with a non-American vessel or aircraft.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer.

[Sec. 3121 (b) (5), Internal Revenue Code 1954, as amended and redesignated paragraph (4) by section 205 (b), (c), Social Security Amendments 1954]

§ 31.3121(b)(4)–1 Services performed on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not an American aircraft, are excepted from employment if—

(1) The employee is employed by such employer "on and in connection with" such vessel or aircraft when outside the United States, and

(2) (i) The employee is not a citizen of the United States, or (ii) the employer is not an American employer.

(b) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft when outside the United States which are also in connection with the vessel or aircraft. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft outside the United States by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) Services performed within the United States on or in connection with a non-American vessel or aircraft for an employer by an employee who is not a citizen of the United States are excepted from employment, irrespective of whether the employer is or is not an American employer, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft by an employee for an employer who is not an American employer also are excepted from employment, irrespective of whether the employee is or is not a citizen of the United States, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft for an American employer by an employee who is a citizen of the United States are not excepted from employment under section 3121 (b) (4), irrespective of whether the employee is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Further, section 3121 (b) (4) does not except from employment services performed within the United States for an employer, whether or not an American employer, on or in connection with a non-American vessel or aircraft by an employee, whether or not a citizen of the United States, who is not also employed by such employer on and in connection with the vessel or aircraft when outside the United States.

(e) Services performed outside the United States on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, by a citizen of the United States as an employee for an American employer are not excepted from employment under section 3121 (b) (4), irrespective of whether the employee is employed on and in connection with such vessel or aircraft when outside the United States. Services performed outside the United States on or in connection with a vessel not an American vessel or on or in connection with an aircraft not an American aircraft, either by an employee who is not a citizen of the United States or for an employer who is not an American employer, do not, in any event, constitute employment. See paragraph (c) of § 31.3121 (b)–3, relating to services performed outside the United States which constitute employment.

(f) See paragraph (c) (2) (v) of § 31.3121 (b)–3 for definitions of "vessel" and "aircraft", § 31.3121 (f)–1, for definitions of "American vessel" and "American aircraft", § 31.3121 (e)–1, for definition of "citizen of the United States", and § 31.3121 (h)–1, for definition of "American employer".

§ 31.3121(b)(5) Statutory provisions; definitions; employment; services in employ of an instrumentality of the United States specifically exempted from the employer tax.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

[Sec. 3121 (b) (6), Internal Revenue Code 1954, redesignated paragraph (5) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(5)–1 Services in employ of an instrumentality of the United States specifically exempted from the employer tax.

Services performed in the employ of an instrumentality of the United States are excepted from employment if such instrumentality is exempt from the employer tax imposed by section 3111 by virtue of any other provision of law which specifically refers to such section 3111 or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939) in granting exemption from the employer tax. This exception does not operate to exclude from employment services performed in the employ of an instrumentality of the United States unless the Congress has granted to such instrumentality a specific exemption from the tax imposed by section 3111 or the corresponding section of prior law. For provisions which make general exemp-

tions from Federal taxation ineffectual as to the employer tax imposed by section 3111, see § 31.3112–1. For other exceptions from employment applicable with respect to services performed in the employ of an instrumentality of the United States, see § 31.3121 (b) (6)–1.

§ 31.3121(b)(6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.

SEC. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

(6) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) Service performed in the employ of a corporation which is wholly owned by the United States;

(ii) Service performed in the employ of a national farm loan association, a production credit association, a Federal Reserve Bank, or a Federal Credit Union;

(iii) Service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) Service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) Service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) As the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) In the legislative branch;

(iii) In a penal institution of the United States by an inmate thereof;

(iv) By any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U. S. C., sec. 1052);

(v) By any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) By any individual to whom the Civil Service Retirement Act of 1930 does not apply because such individual is subject to another retirement system;

[Sec. 3121 (b) (7), Internal Revenue Code 1954, as amended and redesignated paragraph (6) by sec. 205 (b), (d), Social Security Amendments 1954]

§ 31.3121(b)(6)–1 Services in employ of United States or instrumentality thereof.

(a) *In general.* This section relates to services performed in the employ of the United States Government or in the employ of an instrumentality of the United States. Particular services which are not excepted from employment under one rule set forth in this section may nevertheless be excepted under another rule set forth in this section or under § 31.3121 (b) (5)–1, relating to services in the employ of an instrumentality of the United States specifically exempted from the employer tax. Moreover, services performed in the employ of the United States or of any instrumentality thereof which are not excepted from employment under paragraph (5) or (6) of section 3121 (b) may nevertheless be excepted under some other paragraph of such section. For provisions relating generally to the application of the taxes in the case of services performed in the employ of the United States or a wholly owned instrumentality thereof, see § 31.3122.

(b) *Services covered under a retirement system established by a law of the United States.* Services performed in the employ of the United States or in the employ of any instrumentality thereof are excepted from employment under section 3121 (b) (6) (A) if such services are covered under a law enacted by the Congress of the United States which specifically provides for the establishment of a retirement system for employees of the United States or of such instrumentality. Determinations as to whether services are covered by a retirement system of the requisite character are to be made as of the time such services are performed. Services of an employee who has an option to have his services covered under a retirement system are not covered under such retirement system unless and until he exercises such option. The test is whether particular services performed by an employee are covered by a retirement system of the requisite character rather than whether the position in which such services are performed is covered by such retirement system.

(c) *Services performed for an instrumentality not subject to employer tax on December 31, 1950, and covered under a retirement system established by such instrumentality.* (1) Subject to the provisions of subparagraph (4) of this paragraph, services performed in the employ of an instrumentality of the United States are excepted from employment under section 3121 (b) (6) (B) if—

(i) The particular instrumentality was not subject on December 31, 1950, to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939, and

(ii) The services are covered by a retirement system established by such instrumentality.

(2) If the particular instrumentality was not in existence on December 31, 1950, but is created thereafter under a law which was in effect on December 31, 1950, services performed in the employ of such instrumentality are excepted from employment (unless otherwise provided in subparagraph (4) of this paragraph) if—

(i) The instrumentality had it been in existence on December 31, 1950, would not have been subject on that date to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939, and

(ii) The services are covered by a retirement system established by such instrumentality.

It is immaterial, for purposes of this exception, whether the exemption from the employer tax on December 31, 1950, resulted, or would have resulted, from a tax exemption as such in effect on December 31, 1950, or from the provisions of section 1426 (b) (6) of the Internal Revenue Code of 1939 in effect on that date, relating to the exception from employment of services performed in the employ of certain instrumentalities of the United States.

(3) Determinations as to whether services performed in the employ of an instrumentality referred to in subparagraph (1) or (2) of this paragraph are covered by a retirement system established by such instrumentality are to be made as of the time such services are performed. Services of an employee who has an option to have his services covered under a retirement system established by the instrumentality are not covered under such retirement system unless and until he exercises such option. The test is whether particular services performed by an employee are covered by a retirement system established by the instrumentality rather than whether the position in which such services are performed is covered by such retirement system.

(4) The exception from employment provided in section 3121 (b) (6) (B) has no application with respect to any of the following classes of services:

(i) Services performed in the employ of a corporation which is wholly owned by the United States;

(ii) Services performed in the employ of a national farm loan association, a production credit association, a Federal Reserve Bank, or a Federal Credit Union;

(iii) Services performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) Services performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department, or

(v) Services performed by a civilian employee, not compensated from funds

appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard.

(d) *Special classes of services.* The following classes of services performed either in the employ of the United States or in the employ of any instrumentality thereof are excepted from employment under section 3121 (b) (6) (C):

(1) Services performed as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner, of or to the Congress of the United States;

(2) Services performed in the legislative branch of the United States Government;

(3) Services performed in a penal institution of the United States by an inmate thereof;

(4) Services performed by student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, or student occupational therapists, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by any department, agency, or instrumentality of the United States Government, or by certain other student employees described in section 2 of the act of August 4, 1947 (5 U. S. C. 1052);

(5) Services performed by an individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; and

(6) Services performed by an individual to whom the Civil Service Retirement Act does not apply because he is, with respect to such services, subject to another retirement system, established either by a law of the United States or by the agency or instrumentality of the United States for which such services are performed.

§ 31.3121(b)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • • •

(7) Service (other than service which, under subsection (j), constitutes covered transportation service) performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;

[Sec. 3121 (b) (8), Internal Revenue Code 1954, redesignated paragraph (7) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

Services, other than covered transportation service as defined in section 3121(j), performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services, other than covered transportation service, performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted from employment if the instrumentality is wholly owned by one or more of the foregoing. The term "State" includes the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico (see § 31.3121 (e)–1). For provisions relating to service which constitutes covered transportation service, see § 31.3121 (j)–1.

§ 31.3121(b)(8) Statutory provisions; definitions; employment; services performed by a minister of a church or a member of a religious order; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • • •

(8) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (k) (or the corresponding subsection of prior law), is in effect if such service is performed by an employee—

(i) Whose signature appears on the list filed by such organization under subsection (k) (or the corresponding subsection of prior law), or

(ii) Who became an employee of such organization after the calendar quarter in which the certificate was filed;

[Sec. 3121 (b) (9), Internal Revenue Code 1954, redesignated paragraph (8) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(8)–1 Services performed by a minister of a church or a member of a religious order.

(a) *In general.* Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, are excepted from employment. For provisions relating to the election available to certain ministers and members of religious orders to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to certain services performed by them, see Part 1 of this chapter (Income Tax Regulations).

(b) *Service by a minister in the exercise of his ministry.* Except as provided in paragraph (c) (3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(1) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(2) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(3) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged to perform service as chaplain at N University. M devotes his entire time to performing his duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his ministry.

(4) (i) If a minister is performing service for an organization which is operated as an integral agency, of a religous organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (2) of this paragraph) is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. He performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(5) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by

him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by *X*, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) *Service by a minister not in the exercise of his ministry.* (1) Section 3121 (b) (8) (A) does not except from employment service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his ministry.

(2) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the taxes, even though such service may involve the ministration of sacerdotal function or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) *Service in the exercise of duties required by a religious order.* Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

§ 31.3121(b)(8)–2 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) Services performed by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a) are excepted from employment. However, this exception does not apply to services with respect to which a certificate, filed pursuant to section 3121 (k), or section 1426(l) of the Internal Revenue Code of 1939, is in effect. For provisions relating to the services with respect to which such a certificate is in effect, see § 31.3121(k)–1.

(b) For provisions relating to exemption from income tax of an organization described in section 501(c)(3), see Part 1 of this chapter (Income Tax Regulations). For provisions relating to waiver by an organization of its exemption from the taxes imposed by sections 3101 and 3111, see § 31.3121 (k)–1. See also § 31.3121 (b) (8)–1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121 (b) (10)–1, relating to services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; § 31.3121 (b) (10)–2, relating to services performed in the employ of a school, college, or university by certain students; and § 31.3121 (b) (13)–1, relating to services performed by certain student nurses and hospital interns.

§ 31.3121(b)(9) Statutory provisions; definitions; employment; services performed by an employee or an employee representative as defined in section 3231.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(9) Service performed by an individual as an employee or employee representative as defined in section 3231;

[Sec. 3121 (b) (10), Internal Revenue Code 1954, redesignated paragraph (9) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(9)–1 Railroad industry; services performed by an employee or an employee representative as defined in section 3231.

Services performed by an individual as an "employee" or as an "employee representative", as those terms are defined in section 3231, are excepted from employment. For definitions of employee and employee representatives, see §§ 31.3231(b)–1 and 31.3231(c)–1.

§ 31.3121(b)(10) Statutory provisions; definitions; employment; services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; services performed in the employ of a school, college, or university by certain students.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if the remuneration for such service is less than $50;

(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

[Sec. 3121 (b) (11), Internal Revenue Code 1954, redesignated paragraph (10) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(10)–1 Services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax.

(a) Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 are excepted from employment, if the remuneration for the services is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter. For provisions relating to exemption from income tax under section 501(a) or 521, see Part 1 of this chapter (Income Tax Regulations).

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (8). X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted, and the taxes do not attach with respect to any of the remuneration for such services. Since the remunera-

tion for the services performed by B during such quarter, however, is not less than $50, none of such services are excepted, and the taxes attach with respect to all of the remuneration for such services (that is, $180) as and when paid.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns a total of $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. The taxes attach with respect to all of the remuneration for services performed during the second quarter (that is, $60) as and when paid.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted, and the taxes attach with respect to that portion of the remuneration attributable to his services in that quarter.

(b) See § 31.3121 (b) (8)–2, relating to services performed in the employ of religious, charitable, educational, and certain other organizations exempt from income tax; § 31.3121 (b) (8)–1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121 (b) (10)–2, relating to services performed in the employ of a school, college, or university by certain students; and § 31.3121 (b) (13)–1, relating to services performed by certain student nurses and hospital interns.

§ 31.3121(b)(10)–2 Services performed in the employ of a school, college, or university by certain students.

(a) Services performed in the employ of a school, college, or university (whether or not such organization is exempt from income tax) are excepted from employment, if the services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

(b) For purposes of this exception, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services performed by the employee, and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) For provisions relating to domestic service performed by a student in a local college club, or local chapter of a college fraternity or sorority, see § 31.3121 (b) (2)–1.

§ 31.3121(b)(11) Statutory provisions; definitions; employment; services in the employ of a foreign government.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

[Sec. 3121 (b) (12), Internal Revenue Code 1954, redesignated paragraph (11) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(11)–1 Services in the employ of a foreign government.

(a) Services performed by an employee in the employ of a foreign government are excepted from employment. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 31.3121(b)(12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

[Sec. 3121 (b) (13), Internal Revenue Code 1954, redesignated paragraph (12) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(12)–1 Services in employ of wholly owned instrumentality of foreign government.

(a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted from employment. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, if—

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 31.3121(b)(13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

[Sec. 3121 (b) (14), Internal Revenue Code 1954, redesignated paragraph (13) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(13)–1 Services of student nurse or hospital intern.

(a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted from employment, if the student nurse is enrolled and regularly attending classes in a nurses' training school and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an intern (as distinguished from a resident doctor), in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

§ 31.3121(b)(14) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed

after 1954 • • •; except that • • • such term shall not include—

• • • • •

(14) (A) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; or

[Sec. 3121 (b) (16), Internal Revenue Code 1954, redesignated paragraph (14) by sec. 205 (e), Social Security Amendments 1954]

§ 31.3121(b)(14)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted from employment. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted from employment. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted from employment. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

§ 31.3121(b)(15) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(15) Service performed in the employ of an international organization.

[Sec. 3121 (b) (17), Internal Revenue Code 1954, redesignated paragraph (15) by sec. 205 (e), Social Security Amendments 1954]

§ 31.3121(b)(15)–1 Services in employ of international organization.

(a) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), services performed in the employ of an international organization as defined in section 7701(a)(18) are excepted from employment.

(b) (1) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

• • • • •

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(2) Section 1 of the International Organizations Immunities Act provides as follows:

SEC. 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3121(c) Statutory provisions; definitions; included and excluded services.

SEC. 3121. *Definitions.* • • •

(c) *Included and excluded service.* For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b) (9).

[Sec. 3121 (c) as amended by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(c)–1 Included and excluded services.

(a) If a portion of the services performed by an employee for an employer during a pay period constitutes employment, and the remainder does not constitute employment, all the services performed by the employee for the employer during the period shall for purposes of the taxes be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 3121 (b) constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following example:

Example. Employer B, who is engaged in the operation of a store and also in the harvesting of crude gum (oleoresin) from living trees, employs A to perform services in connection with both operations. A's services in connection with the harvesting of crude gum do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours in harvesting the crude gum and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment. During another month A works 75 hours in harvesting crude gum and 120 hours in the store. All of A's services during the month are deemed to be

employment, since one-half or more of his services during the month constitutes employment.

(e) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the employer. Thus, if the periods for which payments of remuneration are made to the employee by the employer are of uniform duration, each such period constitutes a "pay period". If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by the employer, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such employer and receives at the end of the third week a single remuneration payment for three weeks' services, the "pay period" is still the calendar week.

(f) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the employer, such period is deemed to be a "pay period" for purposes of this section.

(g) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the employer if the periods for which such employer makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee", or (2) with respect to any services performed by the employee for the employer if the period for which a payment of remuneration is ordinarily made to the employee by such employer exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the employer during a pay period if any of such service is excepted by section 3121 (b) (9) (see § 31.3121 (b) (9)–1).

(h) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed in this section are not applicable, the taxes attach with respect to such services as constitute employment as defined in section 3121 (b).

§ 31.3121(d) Statutory provisions; definitions; employee.

SEC. 3121. *Definitions.* • • •

(d) *Employee.* For purposes of this chapter, the term "employee" means—

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) Any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) As a full-time life insurance salesman;

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

[Sec. 3121 (d) as amended by sec. 206, Social Security Amendments 1954]

§ 31.3121(d)–1 Who are employees.

(a) *In general.* (1) Whether an individual is an employee with respect to services performed after 1954 is determined in accordance with section 3121 (d). This section of the regulations applies with respect only to services performed after 1954. Whether an individual is an employee with respect to services performed after 1936 and before 1940 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 401 (Regulations 91). Whether an individual is an employee with respect to services performed after 1939 and before 1951 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 402 (Regulations 106). Whether an individual is an employee with respect to services performed after 1950 and before 1955 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 408 (Regulations 128).

(2) Section 3121 (d) contains three separate and independent tests for determining who are employees. Paragraphs (b), (c), and (d) of this section relate to the respective tests. Paragraph (b) relates to the test for determining whether an officer of a corporation is an employee of the corporation. Paragraph (c) relates to the test for determining whether an individual is an employee under the usual common law rules. Paragraph (d) relates to the test for determining which individuals in certain occupational groups who are not employees under the usual common law rules are included as employees. If an individual is an employee under any one of the tests, he is to be considered an employee for purposes of the regulations in this subpart whether or not he is an employee under any of the other tests.

(3) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(4) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees.

(5) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3121 (b)–3).

(b) *Corporate officers.* Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(c) *Common law employees.* (1) Every individual is an employee if under the usual common law rules the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

(2) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists,

veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees. If an individual enters into an agreement with another person pursuant to which such individual undertakes to produce a crop or livestock on land owned or leased by such other person and pursuant to which (i) the crop or livestock produced by such individual or the proceeds thereof are to be divided between such individual and such other person, and (ii) the amount of such individual's share depends on the amount of the crop or livestock produced, such individual is, with respect to such undertaking, an independent contractor and not an employee.

(3) Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case.

(d) *Special classes of employees.* (1) In addition to individuals who are employees under paragraph (b) or (c) of this section, other individuals are employees if they perform services for remuneration under certain prescribed circumstances in the following occupational groups:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for his principal;

(ii) As a full-time life insurance salesman;

(iii) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(iv) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(2) In order for an individual to be an employee under this paragraph, the individual must perform services in an occupation falling within one of the enumerated groups. If the individual does not perform services in one of the designated occupational groups, he is not an employee under this paragraph. An individual who is not an employee under this paragraph may nevertheless be an employee under paragraph (b) or (c) of this section. The language used to designate the respective occupational groups relates to fields of endeavor in which particular designations are not necessarily in universal use with respect to the same service. The designations are addressed to the actual services without regard to any technical or colloquial labels which may be attached to such services. Thus, a determination whether services fall within one of the designated occupational groups depends upon the facts of the particular situation.

(3) The factual situations set forth below are illustrative of some of the individuals falling within each of the above enumerated occupational groups. The illustrative factual situations are as follows:

(i) *Agent-driver or commission-driver.* This occupational group includes agent-drivers or commission-drivers who are engaged in distributing meat or meat products, vegetables or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for their principals. An agent-driver or commission-driver includes an individual who operates his own truck or the truck of the person for whom he performs services, serves customers designated by such person as well as those solicited on his own, and whose compensation is a commission on his sales or the difference between the price he charges his customers and the price he pays to such person for the product or service.

(ii) *Full-time life insurance salesman.* An individual whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one life insurance company is a full-time life insurance salesman. Such a salesman ordinarily uses the office space provided by the company or its general agent, and stenographic assistance, telephone facilities, forms, rate books, and advertising materials are usually made available to him without cost. An individual who is engaged in the general insurance business under a contract or contracts of service which do not contemplate that the individual's principal business activity will be the solicitation of life insurance or annuity contracts, or both, for one company, or any individual who devotes only part time to the solicitation of life insurance contracts, including annuity contracts, and is principally engaged in other endeavors, is not a full-time life insurance salesman.

(iii) *Home workers.* This occupational group includes a worker who performs services off the premises of the person for whom the services are performed, according to specifications furnished by such person, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him. For provisions relating to the determination of wages in the case of a home worker to whom this subdivision is applicable, see § 31.3121 (a) (10)–1.

(iv) *Traveling or city salesman.* (*a*) This occupational group includes a city or traveling salesman who is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person or persons) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. An agent-driver or commission-driver is not within this occupational group. City or traveling salesmen who sell to retailers or to the others specified, operate off the premises of their principals, and are generally compensated on a commission basis, are within this occupational group. Such salesmen are generally not controlled as to the details of their services or the means by which they cover their territories, but in the ordinary case they are expected to call on regular customers with a fair degree of regularity.

(*b*) In order for a city or traveling salesman to be included within this occupational group, his entire or principal business activity must be devoted to the solicitation of orders for one principal. Thus, the multiple-line salesman generally is not within this occupational group. However, if the salesman solicits orders primarily for one principal, he is not excluded from this occupational group solely because of side-line sales activities on behalf of one or more other persons. In such a case, the salesman is within this occupational group only with respect to the services performed for the person for whom he primarily solicits orders and not with respect to the services performed for such other persons. The following examples illustrate the application of the foregoing provisions:

Example (*1*). Salesman A's principal business activity is the solicitation of orders from retail pharmacies on behalf of the X Wholesale Drug Company. A also occasionally solicits orders for drugs on behalf of the Y and Z Companies. A is within this occupational group with respect to his services for the X Company but not with respect to his services for either the Y Company or the Z Company.

Example (*2*). Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R Tool Company and the S Cooking Utensil Company. B regularly solicits orders on behalf of both companies. B is not within this occupational group with respect to the services performed for either the R Company or the S Company.

Example (*3*). Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T Brush Company. C occasionally solicits such orders from retail stores and restaurants. C is not within this occupational group.

(4) (i) The fact that an individual falls within one of the enumerated occupational groups, however, does not make such individual an employee under this paragraph unless (*a*) the contract of service contemplates that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by such individual, (*b*) such individual has no substantial investment in the facilities used in connection with the performance of such services (other than in facilities for transportation) and (*c*) such services are part of a continuing relationship with the person for whom the services are performed and are not in the nature of a single transaction.

(ii) The term "contract of service", as used in this paragraph, means an arrangement, formal or informal, under

which the particular services are performed. The requirement that the contract of service shall contemplate that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by the individual means that it is not contemplated that any material part of the services to which the contract relates in such occupation will be delegated to any other person by the individual who undertakes under the contract to perform such services.

(iii) The facilities to which reference is made in this paragraph include equipment and premises available for the work or enterprise as distinguished from education, training, and experience, but do not include such tools, instruments, equipment, or clothing, as are commonly or frequently provided by employees. An investment in an automobile by an individual which is used primarily for his own transportation in connection with the performance of services for another person has no significance under this paragraph, since such investment is comparable to outlays for transportation by an individual performing similar services who does not own an automobile. Moreover, the investment in facilities for the transportation of the goods or commodities to which the services relate is to be excluded in determining the investment in a particular case. If an individual has a substantial investment in facilities of the requisite character, he is not an employee within the meaning of this paragraph, since a substantial investment of the requisite character standing alone is sufficient to exclude the individual from the employee concept under this paragraph.

(iv) If the services are not performed as part of a continuing relationship with the person for whom the services are performed, but are in the nature of a single transaction, the individual performing such services is not an employee of such person within the meaning of this paragraph. The fact that the services are not performed on consecutive workdays does not indicate that the services are not performed as part of a continuing relationship.

§ 31.3121(d)–2 Who are employers.

(a) Every person is an employer if he employs one or more employees. Neither the number of employees employed nor the period during which any such employee is employed is material for the purpose of determining whether the person for whom the services are performed is an employer.

(b) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(c) Although a person may be an employer under this section, services performed in his employ may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3121 (b)–3).

§ 31.3121(e) Statutory provisions; definitions; State, United States, and citizen.

SEC. 3121. *Definitions.* * * *

(e) *State, United States, and citizen.* For purposes of this chapter—

(1) *State.* The term "State" includes Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands.

(2) *United States.* The term "United States" when used in a geographical sense includes Puerto Rico and the Virgin Islands.

An individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

§ 31.3121(e)–1 State, United States, and citizen.

For purposes of the regulations in this subpart, the terms defined in section 3121(e) have the meanings so assigned to them. When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico. The term "citizen of the United States" includes a citizen of the Virgin Islands or of Puerto Rico.

§ 31.3121(f) Statutory provisions; definitions; American vessel and aircraft.

SEC. 3121. *Definitions.* * * *

(f) *American vessel and aircraft.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

§ 31.3121(f)–1 American vessel and aircraft.

(a) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico). As used herein, a citizen of the United States includes a citizen of the Virgin Islands or of Puerto Rico.

(b) The term "American aircraft" means any aircraft registered under the laws of the United States.

(c) For provisions relating to services performed outside the United States on or in connection with an American vessel or American aircraft, see paragraph (c) (2) of § 31.3121 (b)–3.

§ 31.3121(g) Statutory provisions; definitions; agricultural labor.

SEC. 3121. *Definitions.* * * *

(g) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; 12 U. S. C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. * * *

(g) As used in this Act, the term "agricultural commodity" includes * * * crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [*The Naval Stores Act.*] That, when used in this Act—

* * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

* * * * *

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

* * * * *

§ 31.3121(g)–1 Agricultural labor.

(a) *In general.* (1) The term "agricultural labor" as defined in section 3121(g) includes services of the character described in paragraphs (b), (c), (d), (e), and (f) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term "farm" as used in the regulations in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(3) For provisions relating to the exceptions from employment provided with respect to services performed in connection with the production or harvesting of certain oleoresinous products and to services performed by certain foreign agricultural workers, see § 31.3121 (b)(1)–1. For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for agricultural labor and to the test for determining whether cash remuneration paid for agricultural labor constitutes wages, see § 31.3121 (a) (8)–1.

(b) *Services described in section 3121 (g) (1).* (1) Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(2) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

(c) *Services described in section 3121 (g) (2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 3121 (g) (3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying or storing water for farming purposes; or

(3) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3121 (g) (4).* (1) Services performed by an employee in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity constitute agricultural labor if:

(i) Such services are performed by the employee in the employ of an operator of a farm or in the employ of a group of operators of farms (other than a cooperative organization);

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(2) The term "operator of a farm" as used in this paragraph means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(3) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701 (a) (3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(4) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple sirup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

(5) The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in subparagraph (1) (iii) of this paragraph has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular employee shall be determined on the basis of the pay period in which such services were performed by such employee.

(6) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be

within the provisions of paragraph (c) of this section.

(f) *Services described in section 3121 (g) (5).* (1) Services not in the course of the employers' trade or business (see paragraph (a) (1) of § 31.3121 (a) (7)–1) or domestic service in a private home of the employer (see paragraph (a) (2) of § 31.3121(a)(7)–1) constitutes agricultural labor if such services are performed on a farm operated for profit. The determination whether remuneration for such services performed on a farm operated for profit constitutes wages is to be made under § 31.3121 (a) (8)–1 rather than under § 31.3121 (a) (7)–1.

(2) Generally, a farm is not operated for profit if it is occupied by the employer primarily for residential purposes, or is used primarily for the pleasure of the employer or his family such as for the entertainment of guests or as a hobby of the employer or his family.

§ 31.3121(h) Statutory provisions; definitions; American employer.

SEC. 3121. *Definitions.* • • •

(h) *American employer.* For purposes of this chapter, the term "American employer" means an employer which is—

(1) The United States or any instrumentality thereof,

(2) An individual who is a resident of the United States,

(3) A partnership, if two-thirds or more of the partners are residents of the United States,

(4) A trust, if all of the trustees are residents of the United States, or

(5) A corporation organized under the laws of the United States or of any State.

§ 31.3121(h)–1 American employer.

(a) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States (that is, the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico), (3) a partnership, if two-thirds or more of the partners are residents of the United States, (4) a trust, if all of the trustees are residents of the United States, or (5) a corporation organized under the laws of the United States or of any State (including the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico).

(b) For provisions relating to services performed outside the United States by a citizen of the United States as an employee for an American employer, see paragraph (c) (3) of § 31.3121 (b)–3 and paragraph (e) of § 31.3121 (b) (4)–1.

§ 31.3121(i) Statutory provisions; definitions; computation of wages in certain cases.

SEC. 3121. *Definitions.* • • •

(1) *Computation of wages in certain cases.* For purposes of this chapter, in the case of domestic service described in subsection (a) (7) (B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a) (7) (B).

§ 31.3121(i)–1 Computation to nearest dollar of cash remuneration for domestic service.

An employer may, for purposes of the act, elect to compute to the nearest dollar any payment of cash remuneration for domestic service described in section 3121(a)(7)(B) (see § 31.3121(a)(7)–1) which is more or less than a whole-dollar amount. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to one dollar. For example, any amount actually paid between $4.50 and $5.49, inclusive, may be treated as $5 for purposes of the taxes imposed by the act. If an employer elects this method of computation with respect to any payment of cash remuneration made in a calendar quarter for domestic service in his private home, he must use the same method in computing each payment of cash remuneration of more or less than a whole-dollar amount made to each of his employees in such calendar quarter for domestic service in his private home. Moreover, if an employer elects this method of computation with respect to payments of the prescribed character made in any calendar quarter, the amount of each payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of the act. Thus, the amount of cash payments so computed to the nearest dollar shall be used for purposes of determining whether such payments constitute wages; for purposes of applying the employee and employer tax rates to the wage payments; for purposes of any required record keeping; and for purposes of reporting and paying the employee tax and employer tax with respect to such wage payments.

§ 31.3121(j) Statutory provisions; definitions; covered transportation service.

SEC. 3121. *Definitions.* • • •

(j) *Covered transportation service.* For purposes of this chapter—

(1) *Existing transportation systems—General rule.* Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) *Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered.* Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) Any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) No part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) Became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) Prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) *Transportation systems acquired after 1950.* All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) *Definitions.* For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) A State,

(ii) One or more political subdivisions of a State, or

(iii) A State and one or more of its political subdivisions.

§ 31.3121(j)–1 Covered transportation service.

(a) *Transportation systems acquired in whole or in part after 1936 and before 1951*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, all service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and before 1951. For purposes of this subparagraph, it is immaterial whether any part of the transportation system was acquired before 1937 or after 1950, whether the employee was hired before, during, or after 1950, or whether the employee had been employed by the employer from whom the State or political subdivision acquired its transportation system or any part thereof.

(2) *General retirement system protected by State constitution.* Except as provided in subparagraph (3) of this paragraph, service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system acquired in whole or in part from private ownership after 1936 and before 1951 does not constitute covered transportation service, if substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which are protected from diminution or impairment under the State constitution by reason of an express provision, dealing specifically with retirement systems established by the State or political subdivisions of the State, which forbids such diminution or impairment.

(3) *Additions to certain transportation systems by acquisition after 1950.* This subparagraph is applicable only in case of an acquisition after 1950 from private ownership of an addition to an existing public transportation system which was acquired in whole or in part by a State or political subdivision thereof from private ownership after 1936 and before 1951 and then only in case service for such existing transportation system did not constitute covered transportation service by reason of the provisions of subparagraph (2) of this paragraph. Service in connection with the operation of such transportation system (including any additions acquired after 1950) constitutes covered transportation service commencing with the first day of the third calendar quarter following the calendar quarter in which the addition to the existing transportation system was acquired, if such service is performed by an employee who became an employee of the State or political subdivision in connection with and at the time of its acquisition from private ownership of such addition and who before the acquisition of such addition rendered service in employment in connection with the operation of the addition so acquired by such State or political subdivision. However, service performed by such employee in connection with the operation of the transportation system does not constitute covered transportation service if, on the first day of the third calendar quarter following the calendar quarter in which the addition was acquired, such service is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees who became employees of the State or political subdivision in connection with and at the time of its acquisition of such addition.

(b) *Transportation systems in operation on December 31, 1950, no part of which was acquired after 1936 and before 1951*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, no service performed in the employ of a State or a political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if no part of such transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and before 1951.

(2) *Additions acquired after 1950.* This subparagraph is applicable only in case of an acquisition after 1950 from private ownership of an addition to an existing public transportation system which was operated by a State or political subdivision on December 31, 1950, but no part of which was acquired from private ownership after 1936 and before 1951. Service in connection with the operation of such transportation system (including any additions acquired after 1950) constitutes covered transportation service commencing with the first day of the third calendar quarter following the calendar quarter in which the addition to the existing transportation system was acquired, if such service is performed by an employee who became an employee of the State or political subdivision in connection with and at the time of its acquisition from private ownership of such addition and who before the acquisition of such addition rendered service in employment in connection with the operation of the addition so acquired by such State or political subdivision. However, service performed by such employee in connection with the operation of the transportation system does not constitute covered transportation service if, on the first day of the third calendar quarter following the calendar quarter in which the addition was acquired, such service is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees who became employees of the State or political subdivision in connection with and at the time of its acquisition of such addition.

(c) *Transportation systems acquired after 1950.* All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if the transportation system was not operated by the State or political subdivision before 1951 and, at the time of its first acquisition after 1950 from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(d) *Definitions.* For purposes of this section:

(1) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term does not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(2) A transportation system or a part thereof is considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or an acquired part thereof constituted employment under the act or under subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(3) The term "political subdivision" includes an instrumentality of a State, of one or more political subdivisions of a State, or of a State and one or more of its political subdivisions.

(4) The term "employment" includes service covered by an agreement entered into pursuant to section 218 of the Social Security Act.

§ 31.3121(k) Statutory provisions; definitions; waiver of exemption by religious, charitable, and certain other organizations.

SEC. 3121. *Definitions.* * * *

(k) *Exemption of religious, charitable, and certain other organizations; Waiver of exemption by organization.* An organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees and that at least two-thirds of its employees concur in the filing of the certificate. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee who concurs in the filing of the certificate. Such list may be amended at any time prior to the expiration of the twenty-fourth month following the first calendar quarter for which the certificate is in effect, by filing with the prescribed official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this chapter. The certificate shall be in effect (for purposes of subsection (b) (8) (B) and for purposes of section 210 (a) (8) (B) of the

Social Security Act) for the period beginning with the first day following the close of the calendar quarter in which such certificate is filed, except that, in the case of service performed by an individual whose name appears on a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect, the certificate shall be in effect, for purposes of such subsection (b) (8) and for purposes of section 210 (a) (8) of the Social Security Act, only with respect to service performed by such individual after the calendar quarter in which such supplemental list is filed. The period for which a certificate filed pursuant to this subsection or the corresponding subsection of prior law is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving 2 years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than 8 years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this chapter.

(2) *Termination of waiver period by Secretary or his delegate.* If the Secretary or his delegate finds that any organization which filed a certificate pursuant to this subsection or the corresponding subsection of prior law has failed to comply substantially with the requirements applicable with respect to the taxes imposed by this chapter or the corresponding provisions of prior law or is no longer able to comply with the requirements applicable with respect to the taxes imposed by this chapter, the Secretary or his delegate shall give such organization not less than 60 days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Secretary of Health, Education, and Welfare.

(3) *No renewal of waiver.* In the event the period covered by a certificate filed pursuant to this subsection or the corresponding subsection of prior law is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection.

[Sec. 3121 (k) as amended by secs. 205 (b), 207, and 402, Social Security Amendments 1954]

§ 31.3121(k)–1 Waiver of exemption from taxes.

(a) *Who may waive exemption.* Any organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a) may waive its exemption from the taxes imposed by sections 3101 and 3111 by filing a certificate on Form SS–15, provided that at least two-thirds of the employees of the organization concur in the filing of the certificate. The organization must be exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (3) for the taxable year in which the certificate is filed; otherwise, the Form SS–15 filed by the organization is void. A certificate in effect under section 1426 (l) of the Internal Revenue Code of 1939 on December 31, 1954, continues in effect under, and is subject to the provisions of, section 3121 (k). If the period covered by a certificate filed under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, is terminated by the organization, a certificate may not thereafter be filed by the organization under section 3121 (k).

(b) *Execution and filing of waiver.* (1) The certificate on Form SS–15 shall be filed with the district director for the internal revenue district in which is located the principal office or principal place of business in the United States of the organization. The organization shall certify in the certificate that it desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to services performed by its employees and that at least two-thirds of its employees, determined on the basis of the facts existing as of the date the certificate is filed, concur in the filing of the certificate. All individuals who are employees of the organization within the meaning of section 3121 (d) (see § 31.3121 (d)–1) shall be included in determining whether two-thirds of the employees of the organization concur in the filing of the certificate; except that there shall not be included (i) those employees who at the time of the filing of the certificate are performing for such organization services only of the character specified in paragraphs (8) (A), (10) (B), and (13) of section 3121 (b) (see §§ 31.3121 (b) (8)–1, 31.3121 (b) (10)–2, and 31.3121 (b) (13)–1, respectively), and (ii) those alien employees who at the time of the filing of the certificate are performing services for such organization under an arrangement which provides for the performance only of services outside the United States not on or in connection with an American vessel or American aircraft. As used in this subparagraph, the term "alien employee" does not include an employee who is a citizen of Puerto Rico or of the Virgin Islands, and the term "United States" includes Puerto Rico and the Virgin Islands.

(2) A certificate may be filed under section 3121 (k) only if it is accompanied by a list on Form SS–15a, containing the signature, address, and social security account number, if any, of each employee who concurs in the filing of the certificate. (For provisions relating to account numbers, see the regulations under section 6011 (b) in Subpart G of the regulations in this part.) The list on Form SS–15a accompanying a certificate filed under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, may be amended, at any time before the expiration of the twenty-fourth month following the first calendar quarter for which the certificate is in effect, by filing a supplemental list or lists on Form SS–15a Supplement, containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate.

(c) *Effect of waiver.* (1) A certificate filed by an organization under the provisions of section 3121 (k) shall be in effect, for the period beginning with the first day following the close of the calendar quarter in which the certificate is filed, with respect to services performed in its employ by any employee:

(i) Whose signature appears on the list on Form SS–15a filed with the certificate on Form SS–15, or on a supplemental list on Form SS–15a Supplement filed before the expiration of the fourth calendar month following the calendar quarter in which the certificate is filed.

(ii) Who became an employee of the organization after the calendar quarter in which the certificate is filed.

In no case, however, shall a certificate filed under the provisions of section 3121 (k) be in effect with respect to services performed in the employ of the organization before January 1, 1955. A certificate is not terminated if the organization loses its exemption under section 501 (a) as an organization of the character described in section 501 (c) (3), but continues effective with respect to any subsequent periods during which the organization is so exempt.

(2) If a list accompanying a certificate filed by an organization under the provisions of section 3121 (k), or under the provisions of section 1426 (l) of the Internal Revenue Code of 1939, is amended under the provisions of section 3121 (k) by the filing of a supplemental list on Form SS–15a Supplement after the expiration of the fourth calendar month following the calendar quarter in which the certificate was filed, the certificate shall be in effect with respect to services performed in the employ of the organization by an individual whose signature appears on such supplemental list—

(i) In the period beginning with the first day following the close of the calendar quarter in which such supplemental list is filed, if such supplemental list is filed on or after October 1, 1954, or

(ii) On and after January 1, 1955, if such supplemental list is filed in the month of September 1954.

(3) Services performed in the employ of an organization which has duly filed a certificate under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, by any employee (i) whose signature appears on the list filed by the organization on Form SS–15a or on Form SS–15a Supplement, or (ii) who becomes an employee of the organization after the calendar quarter in which the certificate is filed, are not excepted from employment under section 3121 (b) (8) (B) during the period for which the certificate is in effect with respect to such services. Thus, the taxes imposed by sections 3101 and 3111 will apply to wages paid by the organization for services performed, on and after the first day following the close of the calendar quarter in which the certificate is filed (but not earlier than January 1, 1955), by each employee whose signature appears on the Form SS–15a accompanying the certificate or on any supplemental list or lists on Form SS–15a Supplement filed before the expiration of the fourth calendar month following the calendar quarter in which the certificate was filed. Such taxes will also apply immediately with respect to wages paid

by the organization to any individual who enters the employ of the organization on or after the first day following the close of the calendar quarter in which the certificate is filed. In the case of an employee whose signature appears on a supplemental list filed after the expiration of the fourth calendar month following the calendar quarter in which a certificate was filed either under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, the taxes imposed by sections 3101 and 3111 apply only with respect to wages paid to such individual for services performed after the calendar quarter in which the supplemental list is filed, but in no case earlier than January 1, 1955. A former employee of the organization who is rehired on or after the first day following the close of the calendar quarter in which the certificate was filed shall be considered to have entered the employ of the organization after such calendar quarter, regardless of whether or not such individual concurred in the filing of the certificate.

(d) *Termination of waiver by organization.* (1) The period for which a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, is in effect may be terminated by the organization upon giving to the district director with whom the organization is filing returns 2 years' advance notice in writing of its desire to terminate the effect of the certificate at the end of a specified calendar quarter, but only if, at the time of the receipt of such notice by the district director, the certificate has been in effect for a period of not less than 8 years. The notice of termination shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, (iii) the district director with whom the certificate was filed, (iv) the date on which the certificate became effective, and (v) the date on which the certificate is to be terminated. No particular form is prescribed for the notice of termination.

(2) In computing the effective period which must precede the date of receipt of the notice of termination, there shall be disregarded any period or periods as to which the organization was not exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (3) or under section 101 (6) of the Internal Revenue Code of 1939.

(3) The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. The notice of revocation shall be filed with the district director with whom the notice of termination was filed. The notice of revocation shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, and (iii) the date of the notice of termination to be revoked. No particular form is prescribed for the notice of revocation.

(e) *Termination of waiver by Commissioner.* (1) The period for which a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the organization has failed to comply substantially with the requirements applicable with respect to the taxes imposed by the act (or the corresponding provisions of prior law) or is no longer able to comply therewith. The Commissioner shall give the organization not less than 60 days' advance notice in writing that the period covered by the certificate will terminate at the end of the calendar quarter specified in the notice of termination.

(2) The notice of termination may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, by giving written notice of revocation to the organization before the close of the calendar quarter specified in the notice of termination.

§ 31.3121(l) Statutory provisions; definitions; agreements entered into by domestic corporations with respect to foreign subsidiaries.

SEC. 3121. *Definitions.* • • •

(l) *Agreements entered into by domestic corporations with respect to foreign subsidiaries*—(1) *Agreement with respect to certain employees of foreign subsidiaries.* The Secretary or his delegate shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary or his delegate) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide—

(A) That the domestic corporation shall pay to the Secretary or his delegate, at such time or times as the Secretary or his delegate may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) That the domestic corporation will comply with such regulations relating to payments and reports as the Secretary or his delegate may prescribe to carry out the purposes of this subsection.

(2) *Effective period of agreement.* An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement, but in no case prior to January 1, 1955; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(3) *Termination of period by a domestic corporation.* The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(4) *Termination of period by Secretary.* If the Secretary or his delegate finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary or his delegate shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) *No renewal of agreement.* If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary or his delegate pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(6) *Deposits in trust funds.* For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund

and the Federal Disability Insurance Trust Fund, such remuneration—

(A) Paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) As is reported to the Secretary or his delegate pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(7) *Overpayments and underpayments.* (A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary or his delegate.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary or his delegate, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary or his delegate within two years from the time such overpayment was made.

(8) *Definition of foreign subsidiary.* For purposes of this subsection and section 210 (a) of the Social Security Act, a foreign subsidiary of a domestic corporation is—

(A) A foreign corporation not less than 20 percent of the voting stock of which is owned by such domestic corporation; or

(B) A foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation described in subparagraph (A).

(9) *Domestic corporation as separate entity.* Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413 (c) (2) (C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) *Regulations.* Regulations of the Secretary or his delegate to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

[Sec. 3121 (1) as added by sec. 209, Social Security Amendments 1954; amended by secs. 103(j) and 201(j), Social Security Amendments 1956; sec. 69 Technical Amendments Act of 1958 (72 Stat. 1659)]

§ 31.3121(1)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.

For provisions relating to the extension of the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States in the employ of a foreign subsidiary of a domestic corporation, see the Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries (Part 36 of this chapter).

§ 31.3122 Statutory provisions; Federal service.

SEC. 3122. *Federal service.* In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, the determination whether an individual has performed service which constitutes employment as defined in section 3121 (b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121 (a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the $4,200 limitation in section 3121 (a) (1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121 (a) (1). The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this subsection [section] shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this subsection [section] the Secretary shall be deemed to be the head of such instrumentality.

[Sec. 3122 as amended by secs. 202 (c) and 203, Social Security Amendments 1954]

§ 31.3123 Statutory provisions; deductions as constructive payments.

SEC. 3123. *Deductions as constructive payments.* Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 31.3123–1 Deductions by an employer from remuneration of an employee.

Any amount deducted by an employer from the remuneration of an employee is considered to be part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3124 Statutory provisions; estimate of revenue reduction.

SEC. 3124. *Estimate of revenue reduction.* The Secretary or his delegate at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121 (b) (9) and shall include such estimate in his annual report.

[Sec. 3124 as amended by sec. 205 (b), Social Security Amendments 1954]

§ 31.3125 Statutory provisions; short title.

SEC. 3125. *Short title.* This chapter may be cited as the "Federal Insurance Contributions Act."

Subpart C—Railroad Retirement Tax Act (Chapter 22, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

§ 31.3201 Statutory provisions; rate of tax.

SEC. 3201. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to 6¼ percent of so much of the compensation paid to such employee after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3201 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3201–1 Measure of employee tax.

The employee tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraph (a) (4) and (5) of § 31.3231 (e)–1.

§ 31.3201–2 Rate and computation of employee tax.

The rate of the employee tax is 6¼ percent. The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by 6¼ percent.

§ 31.3202 Statutory provisions; deduction of tax from compensation.

SEC. 3202. *Deduction of tax from compensation*—(a) *Requirement.* The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954 and the aggregate of such compensation is in excess of $350, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion

of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

(b) *Indemnification of employer.* Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

[Sec. 3202 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3202–1 Collection of, and liability for, employee tax.

(a) *Collection; general rule.* The employer shall collect from each of his employees the employee tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. As to the measure of the employee tax, see § 31.3201–1.

(b) *Collection; aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1), each employer shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all employers for that month. See example (1) in subparagraph (2) of this paragraph.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and the employer other than a subordinate unit shall deduct the employee tax with respect to $350 of compensation paid by him after 1954 to such employee for that month. See example (2) in subparagraph (2) of this paragraph.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and each employer other than a subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month. See example (3) in subparagraph (2) of this paragraph.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then each employer other than the subordinate unit shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for that month by all other employers. See example (4) in subparagraph (2) of this paragraph.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then each employer other than the subordinate units shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to that proportion of the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month. See example (5) in subparagraph (2) of this paragraph.

See paragraph (a) (4) and (5) of § 31.3231 (e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax.

(2) The application of certain of the principles stated in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, an employee, renders services during January 1955 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $100 by X, $100 by Y, and $300 by Z, or an aggregate of $500 for the month. In such case X pays one-fifth of A's aggregate compensation for the month, Y pays one-fifth, and Z pays three-fifths. X and Y, therefore, are each required to deduct the employee tax with respect to one-fifth of $350, or $70, and Z is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (2). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $350 by X, $50 by Y, and $25 by Z. Since the compensation paid A for the month by X equals $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month; and X is required to deduct the employee tax with respect to the full $350 paid by him to A for the month.

Example (3). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $200 by W and $300 by X, or an aggregate of $500 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month. Of the aggregate compensation of $500 paid A for the month by W and X, W pays two-fifths and X pays three-fifths. W, therefore, is required to deduct the employee tax with respect to two-fifths of $350, or $140, and X is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (4). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $200 by Y. In such case X is re-

quired to deduct the employee tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employee tax only with respect to $100 ($350 minus $250 paid by X).

Example (5). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $190 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employee tax with respect to the full amount paid to A for the month, that is, W with respect to $190 and X with respect to $100; and Y and Z are required to deduct the employee tax with respect to their proportionate share of $60 ($350 minus $290 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employee tax with respect to one-third of $60, or $20, and Z is required to deduct the employee tax with respect to two-thirds of $60, or $40.

(c) *Undercollections or overcollections.* Any undercollection or overcollection of employee tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

(d) *When fractional part of cent may be disregarded.* In collecting the employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(e) *Employer's liability.* The employer is liable for the employee tax with respect to compensation paid by him, whether or not collected from the employee. If the employer deducts less than the correct amount of employee tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him, the employee is also liable for the employee tax. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. An employer is not liable to any person for the amount of the employee tax deducted by him and paid to the district director.

TAX ON EMPLOYEE REPRESENTATIVES

§ 31.3211 Statutory provisions; rate of tax.

SEC. 3211. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to 12½ percent of so much of the compensation, paid to such employee representative after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3211 as amended by sec. 206 (a), Act of Aug. 31, 1954 (Pub. Law 746, 83rd Cong., 68 Stat. 1040)]

§ 31.3211–1 Measure of employee representative tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employee representative tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee representative for services rendered during any one calendar month after 1954. See § 31.3231 (e)–1, relating to compensation.

(b) *Aggregate monthly compensation in excess of $350 as employee representative and employee.* (1) If during any one calendar month after 1954 an individual renders services as an employee representative and as an employee and the total compensation paid after 1954 to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid after 1954 to such individual for services rendered by him during the month as an employee.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A renders services as an employee representative during January 1955 for which he is paid in the month or thereafter $100. During January 1955 A also renders services as an employee for one or more employers and receives during the month or thereafter compensation of $300. Inasmuch as A's total compensation for services rendered during January 1955 as an employee representative and as an employee exceeds $350 ($300 plus $100), the measure of the employee representative tax is $350 minus $300 (A's compensation for services rendered as an employee), or $50.

§ 31.3211–2 Rate and computation of employee representative tax.

The rate of the employee representative tax is 12½ percent. The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by 12½ percent.

§ 31.3212 Statutory provisions; determination of compensation.

SEC. 3212. *Determination of compensation.* The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231 (a).

§ 31.3212–1 Determination of compensation.

See § 31.3231(e)–1 for regulations applicable to compensation.

TAX ON EMPLOYERS

§ 31.3221 Statutory provisions; rate of tax.

SEC. 3221. *Rate of tax.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6¼ percent of so much of the compensation paid by such employer after December 31, 1954, for services rendered to him after December 31, 1954, as is, with respect to any employee for any calendar month, not in excess of $350; except that if an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954, the tax imposed by this section shall apply to not more than $350 of the aggregate compensation paid to such employee by all such employers after December 31, 1954, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

[Sec. 3221 as amended by sec. 206 (a), Act of Aug. 31, 1954 (Pub. Law 746, 83rd Cong., 68 Stat. 1040)]

§ 31.3221–1 Measure of employer tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employer tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 by the employer to any employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax, see paragraph (a) (4) and (5) of § 31.3231 (e)–1.

(b) *Aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him after 1954 to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1), the measure of the employer tax of each employer shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the

month bears to the total compensation paid after 1954 to such employee by all employers for that month.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employer tax of each subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of the employer other than a subordinate unit with respect to the compensation paid by him after 1954 to such employee for that month shall be $350.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of each employer other than a subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $350 less the total compensation paid after 1954 to such employee for that month by all other employers.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer, and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $350 less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

See paragraph (a) (4) and (5) of § 31.3231 (e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax.

(2) For illustrations of the application of certain of the principles in subparagraph (1) of this paragraph, see the examples, illustrating the analogous principles with respect to the deduction of employee tax, set forth in paragraph (b) (2) of § 31.3202–1.

(c) *Underpayments or overpayments.* Any underpayment or overpayment of employer tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

§ 31.3221–2 Rate and computation of employer tax.

The rate of employer tax is 6¼ percent. The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by 6¼ percent.

General Provisions

§ 31.3231(a) Statutory provisions; definitions; employer.

Sec. 3231. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary or his delegate, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (44 Stat. 577; 45 U. S. C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

§ 31.3231(a)–1 Who are employers.

(a) Each of the following persons is an employer within the meaning of the act:

(1) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

(2) Any company—

(i) Which is directly or indirectly owned or controlled by one or more employers as defined in subparagraph (1) of this paragraph, or under common control therewith, and

(ii) Which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with—

(*a*) The transportation of passengers or property by railroad, or

(*b*) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(3) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in subparagraph (1) or (2) of this paragraph;

(4) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers as defined in subparagraph (1), (2) or (3) of this paragraph and engaged in the performance of services in connection with or incidental to railroad transportation;

(5) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act; and

(6) Any subordinate unit of a national railway-labor-organization employer,

that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in subparagraph (5) of this paragraph, established pursuant to the constitution and bylaws of such employer.

(b) As used in paragraph (a) (2) of this section, the term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interest of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

(c) The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which is operated by any other motive power.

(d) The term "employer" does not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities for such mining or supplying of coal, or in any of such activities.

§ 31.3231(b) Statutory provisions; definitions; employee.

SEC. 3231. *Definitions.* * * *

(b) *Employee.* For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) He was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) He was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) Before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) Solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) Solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) If he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) He was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights; except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (50 Stat. 312; 45 U. S. C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

§ 31.3231(b)–1 Who are employees.

(a) *In general.* (1) An individual who is in the service of one or more employers for compensation is an employee within the meaning of the act. (For definitions of the terms "employer", "service", and "compensation", see subsections (a), (d), and (e), respectively, of section 3231.) An individual is in the service of an employer, with respect to services rendered for compensation, if—

(i) He is subject to the continuing authority of the employer to supervise and direct the manner in which he renders such services; or

(ii) He is rendering professional or technical services and is integrated into the staff of the employer; or

(iii) He is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations.

(2) In order that an individual may be in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph, it is not necessary that the employer actually direct or control the manner in which the services are rendered; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services. Other factors indicating that an individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services are the furnishing of tools and the furnishing of a place to work by the employer to the individual who renders the services.

(3) In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such services, in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph. However, an individual performing services as an independent contractor may be, as to such services, in the service of an employer within the meaning of subparagraph (1) (ii) or (iii) of this paragraph.

(4) Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

(5) If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis.

(6) No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other supervisory personnel are employees within the meaning of the act. An officer of an employer is an employee, but a director as such is not.

(7) In determining whether an individual is an employee with respect to services rendered within the United States, the citizenship or residence of the individual, or the place where the contract of service was entered into, is immaterial.

(8) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. Thus, with respect to services rendered for such employer outside the United States, such individual is not in the service of an employer.

(9) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which conducts the principal part of its business within the United States, he is in the service of such employer whether his services are rendered within or without the United States. In the case of an individual, not a citizen or resident of the United States, rendering services in a place outside the United States to an employer which is required under the laws applicable in such place to employ, in whole or in part, citizens or residents thereof, such individual shall not be deemed to be in the service of an employer with respect to services so rendered.

(10) The term "employee" does not include any individual while he is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(b) *Employees of local lodges or divisions of railway-labor-organization em-*

ployers. (1) An individual is in the service of a local lodge or division of a railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1) only if—

(i) All, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(ii) The headquarters of such local lodge or division is located in the United States.

(2) (i) An individual in the service of a local lodge or division is not an employee within the meaning of the act unless he was, on or after August 29, 1935, in the service of a carrier (see § 31.3231 (g) for definition of carrier) or he was, on August 29, 1935, in the "employment relation" to a carrier.

(ii) An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (*a*) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or (*b*) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (*c*) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (*1*) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (*2*) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (*3*) if he was so called he was solely for such reason unable to render service in six calendar months as provided in (*b*) of this subdivision; or (*d*) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not, with respect to any service in such payroll period, in the service of an employer (see paragraph (a) of this section).

(c) *Employees of general committees of railway-labor-organization employers.* An individual is in the service of a general committee of a railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1) only if—

(1) He is representing a local lodge or division described in paragraph (b) (1) of this section; or

(2) All, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer. In such case, if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only a part of his remuneration for such service shall be regarded as compensation. The part of his remuneration regarded as compensation shall be in the same proportion to his total remuneration as the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable. However, no part of his remuneration for such service shall be regarded as compensation if the application of such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 percent of his remuneration for such service.

§ 31.3231(c) Statutory provisions; definitions; employee representative.

SEC. 3231. *Definitions.* • • •

(c) *Employee representative.* For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (44 Stat. 577; 45 U. S. C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

§ 31.3231(c)–1 Who are employee representatives.

(a) An employee representative within the meaning of the act is—

(1) Any officer or official representative of a railway labor organization which is not included as an employer under section 3231 (a) who—

(i) Was in the service of an employer either before or after June 29, 1937, and

(ii) Is duly authorized and designated to represent employees in accordance with the Railway Labor Act.

For railway labor organizations which are employers under section 3231 (a), see paragraph (a) (5) and (6) of § 31.3231 (a)–1.

(2) Any individual who is regularly assigned to or regularly employed by an employee representative, as defined in subparagraph (1) of this paragraph, in connection with the duties of such employee representative's office.

(b) In determining whether an individual is an employee representative, his citizenship or residence is material only insofar as those factors may affect the determination of whether he was "in the service of an employer" (see paragraph (a) of § 31.3231 (b)–1).

§ 31.3231(d) Statutory provisions; definitions; service.

SEC. 3231. *Definitions.* • • •

(d) *Service.* For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) He is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) He renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) All, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) The headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) He is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) All, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (50 Stat. 308; 45 U. S. C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such

service, no part of such remuneration shall be regarded as compensation;

Provided, however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

§ 31.3231(d)–1 Service.

See § 31.3231(b)–1 for regulations relating to the term "in the service of an employer."

§ 31.3231(e) Statutory provisions; definitions; compensation.

SEC. 3231. *Definitions.* * * *

(e) *Compensation.* For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

[Sec. 3231(e) as amended by sec. 206(b), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040)]

§ 31.3231(e)–1 Compensation.

(a) *Definition.* (1) The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers or as an employee representative. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

(2) The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

(3) The term "compensation" does not include tips or the voluntary payment by an employer of the employee tax without the deduction of such tax from the remuneration of the employee.

(4) If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221.

(5) Compensation for service as a delegate to a national or international convention of a railway-labor-organization employer shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221 if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act of 1937.

(6) For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see paragraph (c) (3) of § 31.3231 (b)–1.

(b) *Items included as compensation.* The following items are included in compensation with respect to employees and in analogous situations with respect to employee representatives:

(1) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece-work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(2) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(3) Amounts paid to an employee for an identifiable period of absence from the active service of the employer on account of personal injury. If a payment is made to an employee with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service.

(4) Amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation.

(5) Amounts paid as allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amounts, if any, over such expenses actually incurred and accounted for by the employee to the employer.

(6) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee, if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not compensation, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(7) Amounts deducted from the compensation of an employee, including the amount of the employee tax deducted pursuant to section 3202, constitute compensation paid to the employee.

(8) Payments made by an employer into a stock bonus, pension, or profit-sharing fund, if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case.

(c) *When compensation is earned.* Compensation is earned when an employee, or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. A payment made by an employer or employee organization to

an individual through the payroll of the employer or employee organization shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the payroll and, thus, to have been earned in such period.

(d) *When compensation is paid.* Compensation is deemed to be paid—

(1) When it is actually paid; or

(2) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(3) Within the period for which a return of tax is required to be made, if the compensation was earned during such period and is payable during the calendar month following such period. For provisions relating to periods for which a return of tax is required, see § 31.6011(a)–2. See also paragraph (c) of this section, relating to when compensation is earned.

Example (1). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X at a monthly salary of $200, one-half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid $100 which was earned during September. That $100 is deemed to have been paid to A in September and should be included in X's return filed for the period in which September falls.

Example (2). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X on the basis of a 6-day week at a weekly salary of $60 payable on Saturday of each week. Thus on Saturday, October 1, 1955, A is paid $60 for services performed during the week September 26, 1955, to October 1, 1955, inclusive. In such case five-sixths of that amount or $50 is deemed to have been paid in September and should be included in X's return filed for the period in which September falls. The balance of A's salary for that week ($10) should be included in the return filed for the period in which October 1955 falls. But see paragraph (a)(2) of § 31.6011(a)–2 relating to returns of employers required by State law to pay compensation on a weekly basis.

§ 31.3231(f) Statutory provisions; definitions; company.

SEC. 3231. *Definitions.* • • •

(f) *Company.* For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

§ 31.3231(g) Statutory provisions; definitions; carrier.

SEC. 3231. *Definitions.* • • •

(g) *Carrier.* For purposes of this chapter, the term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U. S. C., chapter 1).

§ 31.3232 Statutory provisions; court jurisdiction.

SEC. 3232. *Court jurisdiction.* The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary or his delegate to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

§ 31.3233 Statutory provisions; short title.

SEC. 3233. *Short title.* This chapter may be cited as the "Railroad Retirement Tax Act."

Subpart D—Federal Unemployment Tax Act (Chapter 23, Internal Revenue Code of 1954)

§ 31.3301 Statutory provisions; rate of tax.

SEC. 3301. *Rate of tax.* There is hereby imposed on every employer (as defined in section 3306 (a)) for the calendar year 1955 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 percent of the total wages (as defined in section 3306 (b)) paid by him during the calendar year with respect to employment (as defined in section 3306 (c)) after December 31, 1938.

§ 31.3301–1 Persons liable for tax.

Every person who is an employer as defined in section 3306(a) (see § 31.3306 (a)–1) is liable for the tax. Even if an employer is not subject to any State unemployment compensation law, he is nevertheless liable for the tax. However, if he is subject to such a State law, he may be entitled to certain credits against the tax (see §§ 31.3302 (a)–1 to 31.3302 (c)–1, inclusive). For provisions relating to payment of the tax, see Subpart G of the regulations in this part.

§ 31.3301–2 Measure of tax.

The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See §§ 31.3306(c)–1 to 31.3306(c)(17)–1, inclusive, relating to employment, and §§ 31.3306 (b)–1 to 31.3306 (b) (8)–1, inclusive, relating to wages.)

§ 31.3301–3 Rate and computation of tax.

The rate of tax is 3 percent. The tax is computed by applying the 3 percent rate to the wages paid during the calendar year with respect to employment after December 31, 1938.

§ 31.3301–4 When wages are paid.

Wages are paid when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. See § 31.6011(a)–3, relating to the return on which wages are to be reported.

§ 31.3302(a) Statutory provisions; credits against tax; contributions to State unemployment funds.

SEC. 3302. *Credits against tax*—(a) *Contributions to State unemployment funds.* (1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 3304.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

§ 31.3302(a)–1 Credit against tax for contributions paid.

(a) *In general.* Subject to the provisions of paragraphs (b) and (c) of this section and to the provisions of § 31.3302(c)–1, the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Secretary of Labor to contain the provisions specified in section 3304 (a); *Provided, however,* That no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary of the Treasury by the Secretary of Labor. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 3306 (c). For provisions relating to additional credit against the tax, see § 31.3302 (b)–1.

(b) *Limitation on the taxable year with respect to which contributions are*

allowable. In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year.

Example (1). Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ending December 31, 1955, all remuneration payable for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1956. On January 20, 1956, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1956, may be included in computing the credit against the tax for the calendar year 1955. This is true even though the remuneration paid on February 1, 1956 (if it constitutes "wages") is required to be reported in the Federal return for 1956 and not in the Federal return for 1955.

Example (2). Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ending December 31, 1955, certain remuneration paid on December 30, 1955, to an employee for services to be rendered after December 31. On January 20, 1956, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1955, may be included in computing the credit against the tax for the calendar year 1955.

(c) *Limitation on amount of credit allowable based on time when contributions are paid—*(1) *In general.* The amount of credit allowable for contributions paid into a State unemployment fund depends in part on the time of payment of such contributions. Although contributions paid at any time may be credited against the tax (subject to the limitations referred to in subparagraphs (2) and (3) of this paragraph), no refund or credit of the tax based on credit for contributions paid will be allowed unless the contributions are paid prior to the expiration of the period of limitations applicable to refund or credit of the tax. For general provisions relating to the limitation period and to refunds, credits and abatements of the tax, see respectively §§ 301.6511(a)–1, 301.6402–2 and 301.6404–1 of this chapter (Regulations on Procedure and Administration).

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the limit on total credits prescribed in section 3302 (c). (See § 31.3302 (c)–1.) For provisions relating to the time for filing the return see § 31.6071(a)–1 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* Contributions paid into a State unemployment fund after the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day. However, see subparagraph (4) of this paragraph relating to the payment of contributions to the wrong State. For general provisions relating to refunds, credits, and abatements of the tax, see §§ 301.6402–2 and 301.6404–1 of this chapter (Regulations on Procedure and Administration).

Example (1). The Federal return of the M Company for the calendar year 1955 discloses a total tax of $12,000. The company is liable for total State contributions of $8,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1956. If the contributions had been paid on or before January 31, 1956, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of the amount of the contributions ($8,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

Example (2). The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1956, the amount allowable as credit would have been $10,800 (90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,280 ($12,000 minus $9,720).

Example (3). The Federal return of the R Company for the calendar year 1955 discloses a total tax of $10,000. The company is liable for total State contributions of $9,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The R Company pays $8,000 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1956. If the $1,000 had been paid on or before January 31, 1956, that amount could have been credited against the tax (such amount plus the $8,000 paid on or before January 31, 1956, not exceeding 90 percent of the Federal tax of $10,000). Since the $1,000 was paid after January 31, 1956, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $8,000 allowable for the contributions paid on or before January 31, 1956. The net liability for Federal tax is thus $1,100 ($10,000 minus $8,900).

(4) *Amount of credit allowable when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the Federal return for such year was actually filed by the taxpayer under § 31.6011 (a)–3.

Example. Employer N, whose Federal return for the calendar year 1955 discloses a total tax of $1,000, employs individuals in State X and State Y during the calendar year 1955. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1956. When the error was discovered thereafter, N paid to State X contributions in the amount of $900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1956, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $900 against the Federal tax of $1,000, the net liability for Federal tax being $100 ($1,000 minus $900).

§ 31.3302(a)–2 Refund of State contributions.

If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contribution credited against the tax, the taxpayer is required to advise the district director of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

§31.3302(a)–3 Proof of credit under section 3302(a).

Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the district director:

(a) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(1) The total amount of contributions required to be paid under the State law with respect to such calendar year (exclusive of penalties and interest) which was actually paid on or before the date the Federal return is required to be filed; and

(2) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(b) A statement by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ. Such statement shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302 (a).

§ 31.3302(b) Statutory provisions; credits against tax; additional credit.

SEC. 3302. *Credits against tax.* • • •

(b) *Additional credit.* In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

§ 31.3302(b)–1 Additional credit against tax.

(a) *In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 31.3302 (a)–1), the taxpayer may be entitled to a credit under section 3302 (b). This additional credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 3303. Generally, an additional credit is available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Secretary of Labor for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law—*(1) *Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Secretary of Labor certifies as a whole to the Secretary of the Treasury in accordance with the provisions of section 3303, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) he was required to pay under the State law with respect to such year, whether or not paid.

The amount computed under subdivision (ii) of this subparagraph should then be subtracted from the amount computed under subdivision (i) of this subparagraph and the result will be the additional credit for the taxable year with respect to the law of that State.

Example. A employs individuals only in State X during the calendar year 1955. The unemployment compensation law of State X has been certified in its entirety to the Secretary of the Treasury by the Secretary of Labor for such year. The highest rate applied in such year under such State law to any taxpayer is 3 percent. However, A has obtained a rate of 1 percent under the law of such State and is required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law is $25,000. The amount of wages paid by A during that year with respect to employment under the Federal law likewise is $25,000, the Federal tax at the 3 percent rate being $750. A's additional credit under section 3302 (b) is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less:	
Contributions required to be paid at 1 percent rate	250
Additional credit to A	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in order to ascertain the additional credit ($425).

(2) *Certification with respect to particular provisions of a State law.* If the Secretary of Labor makes a certification to the Secretary of the Treasury with respect to particular provisions of a State law for any taxable year pursuant to section 3303, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

(c) *Amount of additional credit allowable to taxpayer with respect to more than one State law.* If the taxpayer is entitled to additional credit with respect to more than one State law in any taxable year, the additional credit allowable with respect to each State law shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable against the tax for such year shall be the aggregate of the additional credits allowable with respect to such State laws. For limitation on total credits, see § 31.3302 (c)–1.

§ 31.3302(b)–2 Proof of additional credit under section 3302(b).

Additional credit under section 3302(b) shall not be allowed against the tax for any calendar year unless there is submitted—

(a) To the Commissioner a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing the highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ; and

(b) To the district director a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer—

(1) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law with respect to such calendar year; and

(2) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in subparagraphs (1) and (2) of this paragraph with respect to each such period.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the additional credit provided for under section 3302 (b).

§ 31.3302(c) Statutory provisions; credits against tax; limit on total credits.

SEC. 3302. *Credits against tax.* • • •

(c) *Limit on total credits.* (1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, and if any balance of such advance or advances has not been returned to the Federal unemployment account as provided in that title before December 1 of the taxable year, then the total credits (after other reductions under this section) otherwise allowable under this section for such taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) In the case of a taxable year beginning with the fourth consecutive January 1 on which such a balance of unreturned advances existed, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of unreturned advances existed, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

For purposes of this paragraph, wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

§ 31.3302(c)–1 Limit on total credits.

(a) *Ninety percent limitation on credits against tax.* The aggregate of the credit under section 3302 (a) and the additional credit under section 3302 (b) shall not exceed 90 percent of the tax against which credit is taken.

(b) *Reduction of amount of total credit otherwise allowable.* (1) Section 3302 (c) (2) provides for a reduction, under certain circumstances, of the amount of the total credits allowable under section 3302 (a), (b), and (c) (1). If any balance of an advance or advances made under title XII of the Social Security Act to the unemployment account of a State remains unpaid on January 1 of 4 consecutive taxable years, the total credits which would be allowable under section

3302 (without regard to the provisions of section 3302 (c) (2)) to a taxpayer subject to the unemployment compensation law of such State shall be reduced for the taxable year beginning with the fourth consecutive January 1, unless prior to December 1 of that taxable year the total amount of any advance or advances made to the account of such State has been fully repaid. The reduction in the total credits allowable under section 3302 (without regard to the provisions of section 3302 (c) (2)) for the taxable year beginning with the fourth consecutive January 1 shall be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State. In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of an unreturned advance or advances exists, the total credits which would be allowable (without regard to the provisions of section 3302 (c) (2)) shall be reduced unless prior to December 1 of such succeeding taxable year the total amount of any advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the tax imposed by section 3301 with respect to the wages paid by the taxpayer during such succeeding taxable year which are attributable to such State. The percentage reduction for any such succeeding taxable year shall be the percentage reduction for the immediately preceding taxable year plus 5 percent.

(2) The computation of the percentage reduction referred to in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). If an advance is made, under title XII of the Social Security Act, to the unemployment account of State X in 1955 and if such advance is not fully returned before December 1, 1959, a balance of an advance will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959), and will remain unreturned on December 1, 1959. In such event, the total credits which would be allowable under section 3302 (without regard to section 3302 (c) (2)) will be reduced for the taxable year 1959 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State X. The reduction will be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1959 which are attributable to State X.

Example (2). If an advance made in 1955 to the unemployment account of State Y is fully returned in 1956 but an advance made to the account of such State in 1956 is not fully returned before December 1, 1959, a reduction of 5 percent (as in example (1)) will be imposed for the taxable year 1959 because a balance of advances will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959) and will remain unreturned on December 1, 1959. If such a balance also exists on January 1, 1960, and all advances made before December 1, 1960, to the unemployment account of State Y are not fully returned before December 1, 1960, the total credits will be reduced for the taxable year 1960. The reduction in the total credits for the taxable year 1960 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1960 which are attributable to State Y. If such a balance also exists on January 1, 1961, and if all advances made before December 1, 1961, to the unemployment account of State Y are not fully returned before December 1, 1961, the total credits will be reduced for the taxable year 1961. The reduction in the total credits for the taxable year 1961 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 15 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1961 which are attributable to State Y.

(3) For purposes of section 3302 (c) (2), wages are attributable to a particular State if they are subject to the unemployment compensation law of the State. If wages are not subject to the unemployment compensation law of any State, the determination as to whether such wages, or any portion thereof, are attributable to the particular State with respect to which the reduction in total credits is imposed shall be made in accordance with rules prescribed by the Commissioner.

§ 31.3303 Statutory provisions; conditions of additional credit allowance.

SEC. 3303. *Conditions of additional credit allowance*—(a) *State standards.* A taxpayer shall be allowed an additional credit under section 3302 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) The guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) Such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) Compensation has been payable from such account throughout the year preceding the computation date, and

(B) The balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) Such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis, the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date.

[Sec. 3303 (a) as amended by sec. 2, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130)]

(b) *Certification by the Secretary of Labor with respect to additional credit allowance.* (1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) *Definitions.* As used in this section—

(1) *Reserve account.* The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) *Pooled fund.* The term "pooled fund" means an unemployment fund or any part

thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) *Partially pooled account.* The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) *Guaranteed employment account.* The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) Guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) Gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) *Year.* The term "year" means any 12 consecutive calendar months.

(6) *Balance.* The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) *Computation date.* The term "computation date" means the date, occuring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) *Reduced rate.* The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) *Voluntary contributions.* A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

§ 31.3304 Statutory provisions; approval of State laws.

SEC. 3304. *Approval of State laws*—(a) *Requirements.* The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104);

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) *Notification.* The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) *Certification.* On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

(d) *Notice of Noncertification.* If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

§ 31.3305 Statutory provisions; applicability of State law.

SEC. 3305. *Applicability of State law*—(a) *Interstate and foreign commerce.* No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) *Federal instrumentalities in general.* The legislature of any State may require any instrumentality of the United States (except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), and as modified by subsection (c)) to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Secretary of Labor under section 3304 with respect to such year.

(c) *National banks.* Nothing contained in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause

an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) *Federal property.* No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) *Bonneville Power Administrator.* [Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954, 68 Stat. 1135]

(f) *American vessels.* The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) *Vessels operated by general agents of United States.* The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) Owned by or bareboat chartered to the United States, and

(2) Whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States not wholly owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) *Requirement by State of contributions.* Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

(1) Require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) Require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) *General agent as legal entity.* Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

§ 31.3306(a) Statutory provisions; definitions; employer.

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

[Sec. 3306 (a) as amended by sec. 1, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130), effective with respect to services performed after December 31, 1955. With respect to services performed before 1956, sec. 3306(a), as set forth below, is applicable.

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 8 or more.]

§ 31.3306(a)–1 Who are employers.

(a) *Definition*—(1) *For 1956 and subsequent calendar years.* Every person who employs 4 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during any calendar year after 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(2) *For calendar year 1955.* Every person who employs 8 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during the calendar year 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(3) *General agents of the Secretary of Commerce.* For provisions relating to the circumstances under which an employee who performs services as an officer or member of the crew of an American vessel (i) which is owned by or bareboat chartered to the United States and (ii) whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than for the United States, see § 31.3306 (n)–1.

(b) The several weeks in each of which occurs a day on which the prescribed number of employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the prescribed number of employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is 4 or more (8 or more for the calendar year 1955).

(c) In determining whether a person employs a sufficient number of employees to be an employer subject to the tax, each employee is counted with respect to services which constitute employment as defined in section 3306 (c) (see § 31.3306 (c)–2). No employee is counted with respect to services which do not constitute employment as so defined. See, however, paragraph (d) of this section.

(d) The provisions of paragraph (c) of this section are subject to the provisions of section 3306 (d), relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 31.3306 (d)–1). For example, if the services of an employee during a pay period are deemed to be employment under section 3306 (d), even though a portion thereof does not constitute employment under section 3306 (c), the employee is counted with respect to all services during the pay period. On the other hand, if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.

§ 31.3306(b) Statutory provisions; definitions; wages.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

§ 31.3306(b)–1 Wages.

(a) *Applicable law and regulations*—(1) *Remuneration paid after 1954.* Whether remuneration paid after 1954 for employment performed after 1938 constitutes wages is determined under section 3306(b). Accordingly, only remuneration paid after 1954 for employment performed after 1938 is covered by this section of the regulations and by the sections relating to the statutory exclusions from wages (§§ 31.3306(b) (1)–1 to 31.3306 (b) (8)–1).

(2) *Remuneration paid after 1939 and before 1955.* Whether remuneration paid after 1939 and before 1955 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 403 (Regulations 107).

(3) *Remuneration paid in 1939.* Whether remuneration paid in 1939 for employment performed after 1938 constitutes wages shall be determined in

accordance with the applicable provisions of law and of 26 CFR (1939) Part 400 (Regulations 90).

(b) The term "wages" means all remuneration for employment unless specifically excepted under section 3306 (b) (see §§ 31.3306 (b) (1)–1 to 31.3306 (b) (8)–1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Except in the case of remuneration paid for services not in the course of the employer's trade or business (see § 31.3306 (b) (7)–1), the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(i) Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 3306 (b), constitutes wages even though at the time paid the individual is no longer an employee.

Example. A is employed by B, an employer, during the month of June 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B during the month. A leaves the employ of B at the close of business on June 30, 1955. On July 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in June. The $100 is wages, and the tax is payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3306 (b) (1)–1 to 31.3306 (b) (8)–1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3306 (c) (§§ 31.3306 (c) (1)–1 to 31.3306 (c) (17)–1, inclusive).

(2) Remuneration for services which are deemed not to be employment under section 3306 (d) (§ 31.3306 (d)–1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

(k) For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3307–1.

§ 31.3306(b)(1) Statutory provisions; definitions; wages; $3,000 limitation.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecesor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

§ 31.3306(b)(1)–1 $3,000 limitation.

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year by an employer to an employee which exceeds the first $3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306 (b)–1 or §§ 31.3306 (b) (2)–1 to 31.3306 (b) (8)–1, inclusive), paid within such calendar year by such employer to such employee for employment performed for him at any time after 1938.

(2) The $3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employer B, in 1955, pays employee A $2,500 on account of $3,000 due him for employment performed in 1955. In 1956 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also pays A $3,000 for employment performed in 1956. The $2,500 paid in 1955 is subject to tax in 1955. The balance of $500 paid in 1956 for employment during 1955 is subject to tax in 1956, as is also the first $2,500 paid of the $3,000 for employment during 1956 (this $500 for 1955 employment added to the first $2,500 paid for 1956 employment constitutes the maximum wages subject to the tax which could be paid in 1956 by B to A). The final $500 paid by B to A in 1956 is not included as wages and is not subject to the tax.

(3) If during a calendar year an employee is paid remuneration by more than one employer, the limitation of wages to the first $3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by each employer with respect to employment performed after 1938. In such case the first $3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax. In connection with the application of the $3,000 limitation, see also paragraph (b) of this section relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

Example (1). During 1955 employer D pays to employee C a salary of $600 a month for employment performed for D during the first seven months of 1955, or total remuneration of $4,200. At the end of the fifth month C has been paid $3,000 by employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 paid to employee C by employer D in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. Employer E pays to C remuneration of $600 a month in each of the remaining five months of 1955, or total remuneration of $3,000. The entire $3,000 paid by E to employee C constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer D and the entire $3,000 paid by employer E constitute wages.

Example (2). During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation, each such corporation being an employer for such year. During such year F is paid a salary of $3,000 by each corporation. Each $3,000 paid to F by each of the corporations, X, Y, and Z (whether or not such corporations are related), constitutes wages and is subject to the tax.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor)

during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $3,000 limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306 (b)–1 or §§ 31.3306 (b) (2)–1 to 31.3306 (b) (8)–1, inclusive), with respect to employment paid (or considered under this provision as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor. Wages paid by a predecessor shall not be considered as having been paid by the successor unless both the predecessor and the successor are employers as defined in section 3306 (a) for the calendar year in which the acquisition occurs (see § 31.3306 (a)–1, relating to who are employers).

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $3,000 limitation, be treated as having been paid to such employee by a successor, if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operations to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1955 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. Both the Y Corporation and the X Company are employers, as defined in the Act, for the calendar year 1955. The X Company has in 1955 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,000 of wages to A. The Y Corporation in 1955 pays to A remuneration with respect to employment of $2,000. Only $1,000 of such remuneration is considered to be wages. For purposes of the $3,000 limitation, the Y Corporation is credited with the $2,000 paid to A by the X Company. If, in the same calendar year, the property is acquired from the Y Corporation by the Z Company, an employer for such year, and A immediately after the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $3,000 limitation as having also been paid by the Y Corporation).

§ 31.3306(b)(2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

§ 31.3306(b)(2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

(a) The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

§ 31.3306(b)(3) Statutory provisions; definitions; wages; retirement payments.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

§ 31.3306(b)(3)–1 Retirement payments.

The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or

annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3306(b)(4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

§ 31.3306(b)(4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.

The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3306(b)(5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6);

§ 31.3306(b)(5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

§ 31.3306(b)(6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(6) The payment by an employer (without deduction from the remuneration of the employee)—

(A) Of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) Of any payment required from an employee under a State unemployment compensation law;

§ 31.3306(b)(6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3306(b)(7) Statutory provisions; definitions; wages; payments other than in cash for service not in the course of the employer's trade or business.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

§ 31.3306(b)(7)–1 Payments other than in cash for service not in the course of employer's trade or business.

The term "wages" does not include remuneration paid in any medium other than cash for service not in the course of the employer's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for service not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exclusion from wages. For provisions relating to the circumstances under which service not in the course of the employer's trade or business does not constitute employment, see § 31.3306 (c) (3)–1.

§ 31.3306(b)(8) Statutory provisions; definitions; wages; payments to stand-by employees.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made.

§ 31.3306(b)(8)–1 Payments to stand-by employees.

The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if—

(a) Such employee does no work (other than being subject to call for the performance of work) for such employer in the period for which such payment is made; and

(b) The employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A, who attained the age of 65 in January 1955, is employed by the X Company on a stand-by basis and is paid $200 by the X Company for being subject to call during the month of February 1955 and an additional $25 for work performed for the X Company on one day in February 1955, then none of the $225 is excluded from wages under this exception.

§ 31.3306(c) Statutory provisions; definitions; employment.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed

after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

§ 31.3306(c)–1 Employment; services performed before 1955.

(a) Services performed after 1938 and before 1955 constitute employment under section 3306(c) if such services were employment under the law applicable to the period in which they were performed.

(b) The tax applies with respect to remuneration paid by an employer after 1954 for services performed after 1938 and before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3306 (b)–1 to 31.3306 (b) (8)–1, inclusive, relating to wages.

(c) Determination of whether services performed after 1938 and before 1955 constitute employment shall be made in accordance with the provisions of law applicable to the period in which they were performed and of the regulations thereunder. The regulations applicable in determining whether services performed after 1938 and before 1955 constitute employment are as follows:

(1) Services performed in 1939—26 CFR (1939) Part 400 (Regulations 90).

(2) Services performed after 1939 and before 1955—26 CFR (1939) Part 403 (Regulations 107).

§ 31.3306(c)–2 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined under section 3306(c). This section, and §§ 31.3306(c)–3 to 31.3306(c)(17)–1, inclusive, apply with respect only to services performed after 1954. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3306(d)–1. For provisions relating to services performed before 1955, see § 31.3306(c)–1.)

(b) *Services performed within the United States.* (1) Services performed after 1954 within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 3306 (c), constitute employment. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c) of this section), do not constitute employment.

(2) With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States.* (1) Services performed after 1954 by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided—

(i) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(ii) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(iii) The services are not excepted under section 3306 (c). (See particularly § 31.3306 (c) (17)–1, relating to fishing.)

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) If services are performed by an employee "on and in connection with" an American vessel when outside the United States and the conditions in subparagraph (1) (ii) and (iii) of this paragraph are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(4) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding services performed by other members of the crew or other employees on or in connection with the vessel may constitute employment.

(5) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(6) For definition of the term "American vessel", see § 31.3306 (m)–1.

(7) With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

§ 31.3306(c)–3 Employment; excepted services in general.

(a) Services performed after 1954 by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 3306(c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States or are performed outside the United States on or in connection with an American vessel. For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306 (d)–1.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 31.3306 (k)–1). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are excepted, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

(c) This section, §§ 31.3306 (c) (1)–1 to 31.3306 (c) (17)–1, inclusive (relating to the several classes of excepted services), and § 31.3306 (d)–1 (relating to included and excluded services) apply with respect to services performed after 1954. For provisions relating to services performed before 1955, see § 31.3306 (c)–1.

§ 31.3306(c)(1) Statutory provisions; definitions; employment; agricultural labor.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

(1) Agricultural labor (as defined in subsection (k));

§ 31.3306(c)(1)–1 Agricultural labor.

Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment. For provisions relating to the definition of the term "agricultural labor", see § 31.3306 (k)–1.

§ 31.3306(c)(2) Statutory provisions; definitions; employment; domestic service.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

§ 31.3306(c)(2)–1 Domestic service.

(a) *In a private home.* (1) Services of a household nature performed by an employee in or about a private home of the person by whom he is employed are excepted from employment. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home and the services performed therein are not excepted.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobile for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed are excepted from employment. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Services not excepted.* Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, are not within the exception. Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs, hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3306(c)(3) Statutory provisions; definitions; employment; services not in the course of the employer's trade or business.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) Such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

§ 31.3306(c)(3)–1 Services not in the course of employer's trade or business.

(a) Services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter are excepted from employment unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both subparagraphs (1) and (2) of this paragraph are met, the services are excepted from employment.

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for services not in the course of the employer's trade or business, only cash remuneration for such services shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs services not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under subparagraph (1) of this paragraph) by such employer in the performance of services not in the course of the employer's trade or business during the preceding calendar quarter (including the last calendar quarter of 1954).

(e) In determining whether an employee has performed services not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such services; and

(2) Any day or portion thereof on which the employee does not perform services of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such services, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform services not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such services on that day. For purposes of this exception, a day is a period of 24 hours commencing at midnight and ending at midnight.

(f) For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3306 (b) (7)–1.

§ 31.3306(c)(4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

§ 31.3306(c)(4)–1 Services on or in connection with a non-American vessel.

(a) In order for services performed within the United States "on or in connection with" a vessel not an American vessel to be excepted from employment under section 3306 (c) (4), the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

(b) An employee performs services on and in connection with the vessel if he performs services on the vessel when

outside the United States which are also in connection with the vessel. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. For definitions of the terms "vessel" and "American vessel", see paragraph (c) (5) of § 31.3306 (c)–2 and § 31.3306 (m)–1, respectively.

(e) Since the only services performed outside the United States which constitute employment are those described in section 3306(c) and paragraph (c) of § 31.3306(c)–2 (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel do not constitute employment in any event.

§ 31.3306(c)(5) Statutory provisions; definitions; employment; family employment.

Sec. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

§ 31.3306(c)(5)–1 Family employment.

(a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

§ 31.3306(c)(6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.

Sec. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) Wholly owned by the United States, or

(B) Exempt from the tax imposed by section 3301 by virtue of any other provision of law;

§ 31.3306(c)(6)–1 Services in employ of United States or instrumentality thereof.

(a) Services performed in the employ of the United States Government, except as provided in section 3306 (n) (see § 31.3306 (n)–1), are excepted from employment. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States or exempt from the tax imposed by section 3301 by virtue of any other provision of law.

(b) Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the tax imposed by section 3301 by virtue of any other provision of law are not within the exception. For example, services performed in the employ of a national bank or a State member bank of the Federal Reserve System are not within the exception.

§ 31.3306(c)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.

Sec. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

§ 31.3306(c)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

(a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 3301.

(b) The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii. (See § 31.3306 (j).)

§ 31.3306(c)(8) Statutory provisions; definitions; employment; services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.

Sec. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

§ 31.3306(c)(8)–1 Services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.

Services performed by an employee in the employ of an organization described in section 3306(c)(8), that is, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment. Any organization which is an organization of a type described in section 501 (c) (3) and which—

(a) Is exempt from income tax under section 501 (a), or

(b) Has been denied exemption from income tax under section 501 (a) by reason of the provisions of section 503 or

504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306 (c) (8). An organization which would be an organization of a type described in section 501 (c) (3) except for those provisions of section 501 (c) (3) which are not contained in section 3306 (c) (8) (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306 (c) (8). For provisions relating to organizations of the types described in section 501 (c) (3) and their status as exempt or nonexempt for income tax purposes, see the provisions of §§ 1.501(a)–1 and 1.501 (c) (3)–1 of this chapter (Income Tax Regulations).

§ 31.3306(c)(9) Statutory provisions; definitions; employment; services performed by an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • • •

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U. S. C. 351);

§ 31.3306(c)(9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.

(a) Services performed by an individual as an "employee" or as an "employee representative", as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted from employment.

(b) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351), as amended, provides, in part, as follows:

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1 (a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1 (a) who before or after August 29, 1935, was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

• • • • •

(l) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee with respect to any calendar month before July 1, 1954, no part of any compensation in excess of $300 shall be recognized, and with respect to any calendar month after June 30, 1954, no part of any compensation in excess of $350 shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of

such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

* * * * *

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

* * * * *

[Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3306(c)(10)(A) Statutory provisions; definitions; employment; services in employ of certain organization exempt from income tax.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if—

(i) The remuneration for such service is less than $50, or

(ii) Such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) Such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

§ 31.3306(c)(10)(A)–1 Services in employ of certain organizations exempt from income tax.

(a) *In general.* (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521. (See the provisions of §§ 1.401–1, 1.501(a)–1, and 1.521–1 of this chapter (Income Tax Regulations.) If the services meet the tests set forth in paragraph (b), (c), or (d) of this section, such services are excepted.

(2) See also § 31.3306 (c) (8)–1 for provisions relating to the exception of services performed in the employ of a religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety; § 31.3306 (c) (10) (B)–1 for provisions relating to the exception of services performed in the employ of an agricultural or horticultural organization; § 31.3306 (c) (10) (C)–1 for provisions relating to the exception of services performed in the employ of a voluntary employees' beneficiary association; and § 31.3306 (c) (10) (D)–1 for provisions relating to the exception of services performed in the employ of a Federal employees' beneficiary association.

(b) *Remuneration less than $50 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 are excepted from employment, if the remuneration for the services is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306 (a)–1). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than $50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501 (a) are excepted from employment:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* (1) Services performed in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 31.3306 (c) (10) (E)–1.

§ 31.3306(c)(10)(B) Statutory provisions; definitions; employment; services in employ of agricultural or horticultural organization exempt from income tax.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (B) Service performed in the employ of an agricultural or horticultural organization described in section 501 (c) (5) which is exempt from tax under section 501 (a);

§ 31.3306(c)(10)(B)–1 Services in employ of agricultural or horticultural organization exempt from income tax.

(a) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501(c)(5) and the regulations thereunder and which is exempt from income tax under section 501(a) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(C) Statutory provisions; definitions; employment; services in employ of voluntary employees' beneficiary association.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—

(i) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and

(ii) 85 percent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

§ 31.3306(c)(10)(C)–1 Services in employ of voluntary employees' beneficiary association.

(a) Services performed by an employee in the employ of an organization of the character described in section 3306(c)(10)(C) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(D) Statutory provisions; definitions; employment; services in employ of Federal employees' beneficiary association.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if—

(i) Admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and

(ii) No part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

§ 31.3306(c)(10)(D)–1 Services in employ of Federal employees' beneficiary association.

(a) Services performed by an employee in the employ of an organization of the character described in section 3306(c)(10)(D) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(E) Statutory provisions; definitions; employment; services of student in employ of school, college, or university not exempt from income tax.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (E) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 (a), if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

§ 31.3306(c)(10)(E)–1 Services of student in employ of school, college, or university not exempt from income tax.

(a) Services performed by a student in the employ of a school, college, or university not exempt from income tax under section 501 (a) are excepted from employment, if the student is enrolled and is regularly attending classes at such school, college, or university.

(b) For purposes of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see paragraph (d) of § 31.3306 (c) (10) (A)–1.

§ 31.3306(c)(11) Statutory provisions; definitions; employment; services in employ of foreign government.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

§ 31.3306 (c) (11)–1 Services in employ of foreign government.

(a) Services performed by an employee in the employ of a foreign government are excepted from employment. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 31.3306(c)(12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the Unitel States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

§ 31.3306(c)(12)–1 Services in employ of wholly owned instrumentality of foreign government.

(a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted from employment. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, if—

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 31.3306(c)(13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

§ 31.3306(c)(13)–1 Services of student nurse or hospital intern.

(a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted from employment, if the student nurse is enrolled and regularly attending classes in a nurses' training school and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an intern (as distinguished from a resident doctor) in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

§ 31.3306(c)(14) Statutory provisions; definitions; employment; services of insurance agent or solicitor.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

§ 31.3306(c)(14)–1 Services of insurance agent or solicitor.

(a) Services performed for a person by an employee as an insurance agent or insurance solicitor are excepted from employment, if all such services performed for such person by such individual are performed for remuneration solely by way of commission.

(b) If all or any part of the remuneration of an employee for services performed as an insurance agent or insurance solicitor for a person is a salary, none of his services performed as an insurance agent or insurance solicitor for such person are excepted from employment, and his total remuneration (for example, salary, or salary and commissions) for such services is included for purposes of computing the tax.

§ 31.3306(c)(15) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(15) (A) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

§ 31.3306(c)(15)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted from employment. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted from employment. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

§ 31.3306(c)(16) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(16) Service performed in the employ of an international organization; or

§ 31.3306(c)(16)–1 Services in employ of international organization.

(a) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), services performed in the employ of an international organization as defined in section 7701(a)(18) are excepted from employment.

(b)(1) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(2) Section 1 of the International Organizations Immunities Act provides as follows:

SEC. 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through ap-

propriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3306(c)(17) Statutory provisions; definitions; employment; fishing services.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • • •

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

§ 31.3306(c)(17)–1 Fishing services.

(a) *In general.* Subject to the limitations prescribed in paragraphs (b) and (c) of this section, services described in this paragraph are excepted from employment. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shell-fish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) of this section performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

§ 31.3306(d) Statutory provisions; definitions; included and excluded services.

SEC. 3306. *Definitions.* • • •

(d) *Included and excluded service.* For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

§ 31.3306(d)–1 Included and excluded services.

(a) If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 3306 (c) constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). Employer B, who operates a farm and a store, employs A to perform services in connection with both operations. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment. During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

Example (2). Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment. During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

(e) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period". If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for 3 weeks' services, the "pay period" is still the calendar week.

(f) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period

is deemed to be a "pay period" for purposes of this section.

(g) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee", or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 3306 (c) (9) (see § 31.3306 (c) (9)–1).

(h) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed in this section are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 3306 (c) (provided such person is an employer as defined in section 3306 (a) and § 31.3306 (a)–1).

§ 31.3306(e) Statutory provisions; definitions; State agency.

SEC. 3306. *Definitions.* • • •

(e) *State agency.* For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

§ 31.3306(f) Statutory provisions; definitions; unemployment fund.

SEC. 3306. *Definitions.* • • •

(f) *Unemployment fund.* For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

§ 31.3306(g) Statutory provisions; definitions; contributions.

SEC. 3306. *Definitions.* • • •

(g) *Contributions.* For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

§ 31.3306(h) Statutory provisions; definitions; compensation.

SEC. 3306. *Definitions.* • • •

(h) *Compensation.* For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

§ 31.3306(i) Statutory provisions; definitions; employee.

SEC. 3306. *Definitions.* • • •

(i) *Employee.* For purposes of this chapter, the term "employee" includes an officer of a corporation, but such term does not include—

(1) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) Any individual (except an officer of a corporation) who is not an employee under such common law rules.

§ 31.3306(i)–1 Who are employees.

(a) Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee. (The word "employer" as used in this section only, notwithstanding the provisions of § 31.3306 (a)–1, includes a person who employs one or more employees.)

(b) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

(c) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(e) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(f) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3306 (c)–2).

§ 31.3306(j) Statutory provisions; definitions; State.

SEC. 3306. *Definitions.* • • •

(j) *State.* For purposes of this chapter, the term "State" includes Alaska, Hawaii, and the District of Columbia.

§ 31.3306(k) Statutory provisions; definitions; agricultural labor.

SEC. 3306. *Definitions.* • • •

(k) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U. S. C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or

to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. * * *

(g) As used in this Act, the term "agricultural commodity" includes * * * crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [The Naval Stores Act.] That, when used in this act—

* * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

* * * * *

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

§ 31.3306(k)–1 Agricultural labor.

(a) *In general.* (1) Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment by reason of section 3306 (c) (1). See § 31.3306 (c) (1)–1. The term "agricultural labor" as defined in section 3306 (k) includes services of the character described in paragraphs (b), (c), (d), and (e) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term "farm" as used in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(b) *Services described in section 3306 (k) (1).* Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(1) The cultivation of the soil;

(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(3) The raising or harvesting of any other agricultural or horticultural commodity.

(c) *Services described in section 3306 (k) (2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, if the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties, do not constitute agricultural labor.

(d) *Services described in section 3306 (k) (3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3306 (k) (4).* (1) (i) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2) of this paragraph), produced by such farmer or farmer-members of such organization or group of farmers constitute agricultural labor, if such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations".

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, constitute agricultural labor, if such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may constitute agricultural labor, whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2) of this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

§ 31.3306(l) Statutory provisions; definitions; certain employees of Bonneville Power Administrator.

SEC. 3306. *Definitions.* * * *

(l) *Certain employees of Bonneville Power Administrator.*

[Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1135)]

§ 31.3306(m) Statutory provisions; definitions; American vessel.

SEC. 3306. *Definitions.* • • •

(m) *American vessel.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

§ 31.3306(m)–1 American vessel.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii). For provisions relating to services performed outside the United States on or in connection with an American vessel, see paragraph (c) of § 31.3306 (c)–2.

§ 31.3306(n) Statutory provisions; definitions; vessels operated by general agents of United States.

SEC. 3306. *Definitions.* • • •

(n) *Vessels operated by general agents of United States.* Notwithstanding the provisions of subsection (c) (6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) Owned by or bareboat chartered to the United States and

(2) Whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

§ 31.3306(n)–1 Services on American vessel whose business is conducted by general agent of Secretary of Commerce.

(a) Section 3306(n) and this section of the regulations apply with respect only to services performed by an officer or member of the crew of an American vessel (1) which is owned by or bareboat chartered to the United States, and (2) whose business is conducted by a general agent of the Secretary of Commerce. Whether services performed by such an officer or member of a crew under the above conditions constitute employment is determined under section 3306 (c) and (n), but without regard to section 3306 (c) (6). See § 31.3306 (c) (6)–1, relating to services performed in the employ of the United States and instrumentalities thereof. If, without regard to section 3306 (c) (6), such services constitute employment, they are not excepted from employment by reason of the fact that they are performed on or in connection with an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce, that is, such services are not excepted from employment by section 3306 (c) (6). For provisions relating to services performed within the United States and services performed outside the United States which constitute employment, see § 31.3306 (c)–2.

(b) The expression "officer or member of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. Thus, the expression includes, for example, the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, and deck hands.

(c) An employee of the United States who performs services as an officer or member of the crew of an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce is considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account. Each such general agent who in his capacity as such qualifies as an employer under section 3306 (a) is with respect to each calendar year for which he so qualifies subject to the tax imposed by section 3301, and to all the requirements imposed upon an employer as defined in section 3306 (a) by the regulations in this part, with respect to services which constitute employment by reason of section 3306 (n) and this section of the regulations.

§ 31.3307 Statutory provisions; deductions as constructive payments.

SEC. 3307. *Deductions as constructive payments.* Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 31.3307–1 Deductions by an employer from remuneration of an employee.

Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3308 Statutory provisions; short title.

SEC. 3308. *Short title.* This chapter may be cited as the "Federal Unemployment Tax Act."

Subpart E—Collection of Income Tax at Source on Wages (Chapter 24, Internal Revenue Code of 1954)

§ 31.3401(a) Statutory provisions; definitions; wages.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

§ 31.3401(a)–1 Wages.

(a) *In general.* (1) The term "wages" means all remuneration for services performed by an employee for his employer unless specifically excepted under section 3401(a) or excepted under section 3402(e). See §§ 31.3401(a) to 31.3401(a)(12)–1, inclusive, and § 31.3402 (e)–1.

(2) The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. (See, however, § 31.3401 (a) (11)–1, relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business.) If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remunera-

tion is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by R during the month of January 1955 and is entitled to receive remuneration of $100 for the services performed for R, the employer, during the month. A leaves the employ of R at the close of business on January 31, 1955. On February 15, 1955 (when A is no longer an employee of R), R pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages within the meaning of the statute.

(b) *Certain specific items*—(1) *Pensions and retirement pay.* (i) In general, pensions and retired pay are wages subject to withholding. However, no withholding is required with respect to amounts paid to an employee upon retirement which are taxable as annuities under the provisions of section 72 or 403. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages. Those payments of pensions or other benefits by the Federal Government under Title 38 of the United States Code which are excluded from gross income are not wages subject to withholding.

(ii) Retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service is subject to withholding unless such pay is excluded from gross income under section 104 (a) (4), or is taxable as an annuity under the provisions of section 72. Where such retirement pay (not excluded from gross income under section 104 (a) (4) and not taxable as an annuity under the provisions of section 72) is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.

(2) *Traveling and other expenses.* Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(3) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(4) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments.

(5) *Deductions by employer from remuneration of an employee.* Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress, or the law of any State or of Puerto Rico, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, Puerto Rico, or the District of Columbia, or any political subdivision of any one or more of the foregoing.

(6) *Payment by an employer of employee's tax, or employee's contributions under a State law.* The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required from an employee under a State unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including the taxes imposed by sections 3101 and 3201.

(7) *Remuneration for services as employee of nonresident alien individual or foreign entity.* The term "wages" includes remuneration for services performed by a citizen or resident of the United States as an employee of a nonresident alien individual, foreign partnership, or foreign corporation whether or not such alien individual or foreign entity is engaged in trade or business within the United States. Any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States), is subject to all the provisions of law and regulations applicable with respect to an employer. See § 31.3401 (d)–1, relating to the term "employer", and § 31.3401 (a) (8) (C)–1, relating to remuneration paid for services performed by a citizen of the United States in Puerto Rico.

(8) *Amounts paid under wage continuation plans*—(i) *Amounts paid before January 1, 1956*—(a) *Amounts paid by employer for whom services are performed.* (1) Withholding is not required upon amounts paid before January 1, 1956, to an employee by his employer under a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness, if such amounts are excludable from the gross income of the employee under section 105 (d) and the records maintained by the employer in accordance with the provisions of sections 6001 and 6051 and the provisions thereunder in Subpart G of the regulations in this part—

(*i*) Separately show the amounts of such payments and distinguish such amounts from all other payments, and

(*ii*) Establish the facts necessary to show that the employee is entitled to the exclusion provided by section 105 (d), either by means of a written statement from the employee as to the injury, illness, or hospitalization, or by any other information which the employer believes to be accurate and which he is willing to accept for purposes of payments under the wage continuation plan.

(2) For the purpose of section 6051 and the regulations thereunder, relating to the requirement of receipts for employees, amounts paid before January 1, 1956, which are excludable from gross income under the provisions of section 105 (d) shall be included in the total wages required to be shown on Form W–2. The amount of any such wages on which the employer, in reliance on section 105 (d), does not withhold must be shown separately, and properly identified, on Form W–2 in such manner that it may be read on each copy of the form.

(3) See sections 6001 and 6051 and the provisions thereunder in Subpart G of the regulations in this part for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished an employee in connection with wage continuation payments, respectively. See also section 105 and § 1.105–4 of this chapter (Income Tax Regulations).

(*b*) *Amounts paid by person other than employer for whom services are performed.* Withholding is not required upon any amounts paid before January 1, 1956, to an employee for a period during which the employee is absent from work on account of personal injuries or sickness, whether or not such amounts are excludable from the gross income of the employee, if such amounts are paid through accident or health insurance or under an accident or health plan by a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401 (d) (1). For example, no withholding is required in connection with accident or health benefits paid by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law.

(ii) *Amounts paid after December 31, 1955*—(*a*) *In general.* The term "wage continuation payment", as used in this subdivision, means any payment to an employee which is made after December 31, 1955, under a wage continuation plan (as defined in paragraph (a) (2) (i) of § 1.105–4 and § 1.105–5 of this chapter (Income Tax Regulations)) for a period of absence from work on account of personal injuries or sickness, to the extent such payment is attributable to contributions made by the employer which were not includible in the employee's gross income or is paid by the employer. Any such payment, whether or not excluded from the gross income of the employee under section 105(d), constitutes "wages" (unless specifically excepted under any of the numbered paragraphs of section 3401(a) or under section 3402(e)) and withholding thereon is required except as provided in (*b*) and (*c*) of this subdivision.

(b) *Amounts paid by employer for whom services are performed.* Withholding is not required with respect to any or all employees upon the amount of any wage continuation payment made to an employee directly by the employer for whom he performs services to the extent that such payment is excludable from the gross income of the employee under section 105 (d), provided the records maintained by the employer—

(1) Separately show the amount of each such payment and the excludable portion thereof, and

(2) Contain data substantiating the employee's entitlement to the exclusion provided in section 105 (d) with respect to such amount, either by a written statement from the employee specifying whether his absence from work during the period for which the payment was made was due to a personal injury or whether such absence was due to sickness, and, if the latter, whether he was hospitalized for at least one day during this period; or by any other information which the employer reasonably believes establishes the employee's entitlement to the exclusion under section 105 (d). Employers shall not be required to ascertain the accuracy of the information contained in any written statement submitted by an employee in accordance with (2) above. For purposes of this subdivision, computation of the amount excludable from the gross income of the employee under section 105 (d) may be made either on the basis of the wage continuation payments which are made directly by the employer for whom the employee performs services, or on the basis of such payments in conjunction with any wage continuation payments made on behalf of the employer by a person who is regarded as an employer under section 3401 (d) (1).

(c) *Amounts paid by person other than the employer for whom services are performed.* No tax shall be withheld upon any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401 (d) (1). For example, no tax shall be withheld with respect to wage continuation payments made on behalf of an employer by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law.

(d) *Cross references.* See sections 6001 and 6051 and the regulations thereunder for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished an employee in connection with wage continuation payments, respectively. See also section 105 and § 1.105–4 of this chapter (Income Tax Regulations).

(9) *Value of meals and lodging.* The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee. See § 1.119–1 of this chapter (Income Tax Regulations).

(10) *Facilities or privileges.* Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.

(11) *Tips or gratuities.* Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer, are not subject to withholding.

(12) *Remuneration for services performed by permanent resident of Virgin Islands*—(i) *Exemption from withholding.* No tax shall be withheld for the United States under chapter 24 from a payment of wages by an employer, including the United States or any agency thereof, to an employee if at the time of payment it is reasonable to believe that the employee will be required to satisfy his income tax obligations with respect to such wages under section 28 (a) of the Revised Organic Act of the Virgin Islands (68 Stat. 508). That section provides that all persons whose permanent residence is in the Virgin Islands "shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands".

(ii) *Claiming exemption.* If the employee furnishes to the employer a statement in duplicate that he expects to satisfy his income tax obligations under section 28 (a) of the Revised Organic Act of the Virgin Islands with respect to all wages subsequently to be paid to him by the employer during the taxable year to which the statement relates, the employer may, in the absence of information to the contrary, rely on such statement as establishing reasonable belief that the employee will so satisfy his income tax obligations. The employee's statement shall identify the taxable year to which it relates, and both the original and the duplicate copy thereof shall be signed and dated by the employee.

(iii) *Disposition of statement.* The original of the statement shall be retained by the employer. The duplicate copy of the statement shall be sent by the employer to the Director of International Operations, Washington 25, D. C., on or before the last day of the calendar year in which the employer receives the statement from the employee.

(iv) *Applicability of subparagraph.* This subparagraph has no application with respect to any payment of remuneration which is not subject to withholding by reason of any other provision of the regulations in this subpart.

§ 31.3401(a)–2 Exclusions from wages.

(a) *In general.* (1) The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401 (a) (see paragraph (b) of this section and §§ 31.3401 (a) (1)–1 to 31.3401 (a) (12)–1, inclusive).

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

Example. A is an individual who is employed part time by B to perform domestic service in his home (see § 31.3401 (a) (3)–1). A is also employed by C part time to perform services as a clerk in a department store owned by him. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services.

(3) For provisions relating to the circumstances under which remuneration which is excepted is nevertheless deemed to be wages, and relating to the circumstances under which remuneration which is not excepted is nevertheless deemed not to be wages, see § 31.3402 (e)–1.

(b) *Fees paid a public official.* (1) Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding.

(2) Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

§ 31.3401(a)(1) Statutory provisions; definitions; wages; certain remuneration of members of the Armed Forces.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

(1) For active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112; or

§ 31.3401 (a) (1)–1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.

Remuneration paid for active service as a member of the Armed Forces of the United States performed in a month during any part of which such member served in a combat zone (as determined under section 112) or is hospitalized at any place as a result of wounds, disease, or injury incurred while serving in such a combat zone is excepted from wages and is, therefore, not subject to withholding. The exception with respect to

hospitalization is applicable, however, only if during all of such month there are combatant activities in some combat zone (as determined under section 112). See § 1.112–1 of this chapter (Income Tax Regulations).

§ 31.3401(a)(2) Statutory provisions; definitions; wages; remuneration paid for agricultural labor.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(2) For agricultural labor (as defined in section 3121 (g)); or

§ 31.3401(a)(2)–1 Agricultural labor.

The term "wages" does not include remuneration for services which constitute agricultural labor as defined in section 3121 (g). For regulations relating to the definition of the term "agricultural labor", see § 31.3121(g)–1.

§ 31.3401(a)(3) Statutory provisions; definitions; wages; remuneration paid for domestic service.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(3) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

§ 31.3401(a)(3)–1 Remuneration for domestic service.

(a) *In a private home.* (1) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home, and the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Remuneration paid for services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed is excepted from wages and hence is not subject to withholding. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Remuneration not excepted.* Remuneration paid for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, is not within the exception. Remuneration paid for services of a household nature is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3401(a)(4) Statutory provisions; definitions; wages; cash remuneration for service not in the course of employer's trade or business.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(4) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) Such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

§ 31.3401(a)(4)–1 Cash remuneration for service not in the course of employer's trade or business.

(a) Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both subparagraphs (1) and (2) of this paragraph are met, cash remuneration for service not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3401 (a) (11)–1.)

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Accordingly, this exception does not apply with respect to remuneration which is excepted from wages under section 3401 (a) (2) or section 3401 (a) (3) (see §§ 31.3401 (a) (2)–1 and 31.3401 (a) (3)–1, respectively). Remuneration paid for service performed for a corporation does not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs service not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under subparagraph (1) of this paragraph) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

(e) In determining whether an employee has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such service; and

(2) Any day or portion thereof on which the employee does not perform service of the prescribed character but

with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform service not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period of 24 hours commencing at midnight and ending at midnight.

§ 31.3401(a)(5) Statutory provisions; definitions; wages; remuneration for services for foreign government or international organization.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(5) For services by a citizen or resident of the United States for a foreign government or an international organization; or

§ 31.3401(a)(5)–1 Remuneration for services for foreign government or international organization.

(a) *Services for foreign government.* (1) Remuneration paid for services performed as an employee of a foreign government is excepted from wages and hence is not subject to withholding. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other officer or employee of a foreign government or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or any State (including the District of Columbia or the Territory of Alaska or Hawaii) or of Puerto Rico even though such corporation is wholly owned by such a government.

(2) The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception.

(b) *Services for international organization.* (1) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), remuneration paid for services performed within or without the United States by an employee for an international organization as defined in section 7701 (a) (18) is excepted from wages and hence is not subject to withholding. The term "employee" as used in the preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive order, if (i) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such services are performed.

(2) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(3) Section 1 of the International Organizations Immunities Act provides as follows:

SECTION 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3401(a)(6) Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(6) For services performed by a nonresident alien individual, other than—

(A) A resident of a contiguous country who enters and leaves the United States at frequent intervals; or

(B) A resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof; or

§ 31.3401(a)(6)–1 Remuneration for services of certain nonresident alien individuals.

(a) Except in the case of certain nonresident alien individuals who are residents of Canada, Mexico, or Puerto Rico, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 3402. For withholding of income tax on remuneration paid for services performed within the United States in the case of nonresident alien individuals generally, see § 1.1441–1 and following of this chapter (Income Tax Regulations).

(b) Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who enter and leave the United States at frequent intervals is not excepted from wages under section 3401 (a) (6). See, however, § 31.3401 (a) (7)–1, relating to remuneration paid to such nonresident alien individuals when engaged in transportation service.

(c) Remuneration paid to a nonresident alien individual for services performed in Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding, even though such alien individual is a resident of Puerto Rico at the time when such services are performed. Wages paid for services performed by a nonresident alien individual who is a resident of Puerto Rico are subject to withholding if such services are performed as an employee of the United States or any agency thereof. The place of performance of such services is immaterial, provided such alien individual is a resident of Puerto Rico at the time of performance of the services. Wages representing retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service are subject to withholding, under the limitations specified in paragraph (b) (1) (ii) of § 31.3401 (a)–1, in the case of an alien resident of Puerto Rico.

§ 31.3401(a)(7) Statutory provisions; definitions; wages; remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(7) For such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Secretary or his delegate; or

§ 31.3401(a)(7)–1 Remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.

(a) *Transportation service.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, ferry, steamboat, and aircraft services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, is not subject to withholding under section 3402.

(b) *Service on international projects.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by or traversing the boundary between the United States and Canada or the boundary between the United States and Mexico, as the case may be, enter and leave the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. Thus, the remuneration of a nonresident alien individual who is a resident of Canada, for services as an employee in connection with the construction, maintenance, or operation of the Saint Lawrence Seaway and who, in the performance of such services, enters and leaves the United States at frequent intervals, is not subject to withholding under section 3402.

(c) *Limitation on application of section.* The exception provided by this section has no application to the remuneration of a resident of Canada or of Mexico who is employed wholly within the United States as, for example, where such a resident is employed to perform service at a fixed point or points in the United States, such as a factory, store, office, or designated area or areas within the United States, and who commutes from his home in Canada or Mexico in the pursuit of his employment within the United States.

(d) *Certificate required.* In order for the exception to apply, the nonresident alien employee must furnish his employer a statement setting forth the employee's name and address and certifying (1) that he is not a citizen of the United States, (2) that he is a resident of Canada or Mexico, as the case may be, and (3) the approximate period of time during which he has had such status. Such statement shall be dated, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

§ 31.3401(a)(8)(A) Statutory provisions; definitions; wages; remuneration paid for services performed by citizens outside the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(8) (A) For services for an employer (other than the United States or any agency thereof)—

(i) Performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) Performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

[Sec. 3401(a)(8) as amended by Act of Aug. 9, 1955 (Pub. Law 321, 84th Cong., 69 Stat. 617)]

§ 31.3401(a)(8)(A)–1 Remuneration for services performed outside the United States by citizens of the United States.

(a) *Remuneration excluded from gross income under section 911*—(1) *Resident of a foreign country.* (i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911 (a) (1). The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911 (a) (1).

(ii) If an individual citizen of the United States establishes to the satisfaction of the district director that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received by such individual from sources without the United States (except amounts paid by the United States or any agency thereof) are excluded from gross income under the provisions of section 911 (a) (1), provided that such amounts constitute earned income, as defined in section 911 (b), which is attributable to such uninterrupted period. See § 1.911–1 of this chapter (Income Tax Regulations).

(iii) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that remuneration for services performed outside the United States during the taxable year, or applicable portion thereof, will be excluded from gross income under the provisions of section 911 (a) (1) for each taxable year in respect of which the employee properly executes and furnishes in duplicate to the employer a statement in the following form:

Statement for claiming benefits of Section 911 (a) (1) for calendar year ------ or fiscal year beginning ------ and ending ------.

(A) My name is ----------. My present address is ----------. I am employed by ----------.

(B) My last address in the United States was ----------. The internal revenue district in which I filed my last income tax return is ----------.

(C) I ---------- file my income tax return
(Do or do not)
on the calendar-year basis.

(D) I file my income tax return on the basis of the fiscal year beginning ----------, 19--, and ending ----------, 19--.

(E) I am a citizen of the United States.

(F) I have been a bona fide resident of the following foreign country or countries, namely, ----------, for an uninterrupted period which began on ----------, 19--.

(G) I expect to remain a bona fide resident of a foreign country or countries from the date of this statement until the end of the taxable year in respect of which this statement is executed.

(H) On the basis of the facts in my case I have good reason to believe that, with respect to the above period of foreign residence falling within the taxable year, I will satisfy the bona fide foreign-residence requirement prescribed by section 911 (a) (1) of the Internal Revenue Code of 1954.

(I) I understand that any exemption from withholding of tax permitted by reason of the furnishing of this statement is not a determination by the district director of internal revenue that any remuneration paid to me for any services performed during the taxable year is excludable from gross income under the provisions of section 911 (a) (1).

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

(Signature of taxpayer)

Date: ----------, 19--.

(iv) If the employer was entitled to presume for the two consecutive taxable years immediately preceding an employee's current taxable year that such employee's remuneration for services performed outside the United States during such preceding taxable years would be excluded from gross income under the provisions of section 911 (a) (1) (or section 116 (a) (1) of the Internal Revenue Code of 1939), he may, if such employee is residing in a foreign country on the first day of such current taxable year, presume that, in the absence of cause for a reasonable belief to the contrary, the remuneration for services performed outside the United States during such current taxable year will be excluded from gross income under the provisions of section 911 (a) (1) without obtaining from the employee the statement prescribed in subdivision (iii) of this subparagraph.

(2) *Physical presence in a foreign country.* (i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of

payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911 (a) (2). The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911 (a) (2).

(ii) If an individual citizen of the United States is present in a foreign country or countries during at least 510 full days during any period of 18 consecutive months, amounts received by such individual from sources without the United States (except amounts paid by the United States or any agency thereof) are excluded from gross income under the provisions of section 911 (a) (2), provided that such amounts constitute earned income, as defined in section 911 (b), which is attributable to such period. However, the total amount so excluded from gross income under the provisions of such section may not exceed $20,000 for each taxable year if the 18-month period includes the entire taxable year. If the 18-month period does not include the entire taxable year, the amount excluded from gross income under such section for such taxable year may not exceed an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year. See § 1.911–1 of this chapter (Income Tax Regulations).

(iii) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that remuneration for services performed outside the United States during the taxable year, or applicable portion thereof, will be excluded from gross income under the provisions of section 911 (a) (2) for each taxable year in respect of which the employee properly executes and furnishes in duplicate to the employer a statement in the form set forth below. The presumption shall not apply after the total payments made during the taxable year of the employee equal $20,000 or such lesser amount as may be allowable under section 911 (a) (2) on the basis of the facts shown in such statement.

Statement for claiming benefits of Section 911 (a) (2) for calendar year ------ or fiscal year beginning ------ and ending ------.

(A) My name is ----------. My present address is ----------. I am employed by ----------.

(B) My last address in the United States was ----------. The internal revenue district in which I filed my last income tax return is ----------.

(C) I ---------- file my income tax return on the calendar-year basis.
(Do or do not)

(D) I file my income tax return on the basis of the fiscal year beginning ----------, 19--, and ending ----------, 19--.

(E) I am a citizen of the United States.

(F) Except for occasional absences which have not disqualified me for the benefit of section 911 (a) (2) of the Internal Revenue Code of 1954, I have been present in the following foreign country or countries, namely ----------, during the period of time which began on ----------, 19--.

(G) I expect to be present in a foreign country or countries, except for occasional absences not disqualifying me for the benefit of section 911 (a) (2), from the date of this statement until the end of the taxable year in respect of which this statement is executed, or, if not for such period, from the date of this statement until the following date within such taxable year, namely, ----------, 19--.

(H) On the basis of the facts in my case I have good reason to believe that, with respect to the above period of presence in a foreign country or countries falling within the taxable year, I will satisfy the 510 full-day requirement prescribed by section 911 (a) (2).

(I) In the event I become disqualified for the exclusion provided by section 911 (a) (2) in respect of all or part of the above period of presence in a foreign country or countries falling within the taxable year, I will immediately notify my employer, giving sufficient facts to indicate the part, if any, of such period falling within such year in respect of which I am qualified for such exclusion.

(J) I understand that any exemption from withholding of tax permitted by reason of the furnishing of this statement is not a determination by the district director of internal revenue that any remuneration paid to me for any services performed during the taxable year is excludable from gross income under the provisions of section 911 (a) (2).

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

(Signature of taxpayer)

Date: ----------, 19--.

(3) *Disposition of statements for claiming benefits of section 911.* The original of each statement furnished to the employer pursuant to subparagraph (1) (iii) or (2) (iii) of this paragraph shall be transmitted to the district director with the employer's return filed pursuant to the provisions of Subpart G of the regulations in this part for the tax-return period in which such statement is received by the employer. The duplicate copy of each such statement shall be retained by the employer.

(b) *Remuneration subject to withholding of income tax under law of a foreign country or a possession of the United States.* (1) Remuneration paid for services performed in a foreign country or in a possession of the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of the payment of such remuneration the employer is required by the law of any foreign country or of any possession of the United States to withhold income tax upon such remuneration. This paragraph, insofar as it relates to remuneration paid for services performed in a possession of the United States, applies only with respect to remuneration paid on or after August 9, 1955.

(2) Remuneration is not exempt from withholding under this paragraph if the employer is not required by the law of a foreign country or of a possession of the United States to withhold income tax upon such remuneration. Mere agreements between the employer and the employee whereby the estimated income tax of a foreign country or of a possession of the United States is withheld from the remuneration in anticipation of actual liability under the law of such country or possession will not suffice.

(3) The exemption from withholding provided by this paragraph does not apply by reason of withholding of income tax pursuant to the law of a territory of the United States, of a political subdivision of a possession of the United States, or of a political subdivision of a foreign state.

(4) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b) (12) of § 31.3401 (a)–1.

(c) *Limitation on application of section.* This section has no application to the remuneration paid to a citizen of the United States for services performed outside the United States as an employee of the United States or any agency thereof.

§ 31.3401(a)(8)(B) Statutory provisions; definitions; wages; remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(8) (B) For services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

§ 31.3401(a)(8)(B)–1 Remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.

(a) Remuneration paid for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico) does not constitute wages and hence is not subject to withholding, if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services. The reasonable belief contemplated by section 3401 (a) (8) (B) may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that at least 80 percent of the remuneration paid by the employer to the employee during the calendar year was for services performed within such a possession of the United States.

(b) This section has no application to remuneration paid to a citizen of the United States for services performed in any possession of the United States as an

employee of the United States or any agency thereof.

(c) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b) (12) of § 31.3401 (a)–1.

§ 31.3401(a)(8)(C) Statutory provisions; definitions; wages; remuneration for services performed in Puerto Rico by citizen of the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(8) (C) For services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

§ 31.3401(a)(8)(C)–1 Remuneration for services performed in Puerto Rico by citizen of the United States.

(a) Remuneration paid for services performed within Puerto Rico for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico. The reasonable belief contemplated by section 3401 (a) (8) (C) may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the employee was a bona fide resident of Puerto Rico for the entire calendar year.

(b) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will be a bona fide resident of Puerto Rico during the entire calendar year—

(1) Unless the employee is known by the employer to have maintained his abode at a place outside Puerto Rico at some time during the current or the preceding calendar year; or

(2) In any case where the employee files with the employer a statement (containing a declaration under the penalties of perjury that such statement is true to the best of the employee's knowledge and belief) that such employee has at all times during the current calendar year been a bona fide resident of Puerto Rico and that he intends to remain a bona fide resident of Puerto Rico during the entire remaining portion of such current calendar year.

(c) This section has no application to remuneration paid to a citizen of the United States for services performed in Puerto Rico as an employee of the United States or any agency thereof.

§ 31.3401(a)(9) Statutory provisions; definitions; wages; remuneration for services performed by a minister of a church or a member of a religious order.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(9) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

§ 31.3401(a)(9)–1 Remuneration for services performed by a minister of a church or a member of a religious order.

(a) *In general.* Remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, is excepted from wages and hence is not subject to withholding.

(b) *Service by a minister in the exercise of his ministry.* Except as provided in paragraph (c) (3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(1) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(2) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(3) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged to perform service as chaplain at N University. M devotes his entire time to performing his duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his ministry.

(4) (i) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (2) of this paragraph) is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. He performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(5) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by X, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) *Service by a minister not in the exercise of his ministry.* (1) Section 3401 (a) (9) does not except from wages remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his ministry.

(2) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious

organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the collection of income tax at source on wages, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) *Service in the exercise of duties required by a religious order.* Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

§ 31.3401(a)(10) Statutory provisions; definitions; wages; remuneration for services in the delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(10) (A) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

§ 31.3401(a)(10)–1 Remuneration for services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Remuneration for services performed by an employee under the age of 18 in the delivery or distribution of newspapers, or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, is excepted from wages and hence is not subject to withholding. Thus, remuneration for services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, is excepted from wages. The remuneration is excepted irrespective of the form or method thereof. Remuneration for incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, is considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Remuneration for services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his remuneration being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, is excepted from wages and hence is not subject to withholding. The remuneration is excepted whether or not the employee is guaranteed a minimum amount of remuneration, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the remuneration is excepted without regard to the age of the employee. Remuneration for services performed other than at the time of sale to the ultimate consumer is not within the exception. Thus, remuneration for services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer is not within the exception. However, remuneration for incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, is considered to be within the exception.

§ 31.3401(a)(11) Statutory provisions; definitions; wages; remuneration other than in cash for services not in the course of employer's trade or business.

SEC. 3401. *Definition*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(11) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

§ 31.3401(a)(11)–1 Remuneration other than in cash for service not in the course of employer's trade or business.

(a) Remuneration paid in any medium other than cash for services not in the course of the employer's trade or business is excepted from wages and hence is not subject to withholding. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for services not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exception from wages. For provisions relating to cash remuneration for service not in the course of employer's trade or business, see § 31.3401(a)(4)–1.

(b) As used in this section, the term "services not in the course of the employer's trade or business" has the same meaning as when used in § 31.3401 (a) (4)–1.

§ 31.3401(a)(12) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration * * * for services performed by an employee for his employer * * *; except that such term shall not include remuneration paid—

* * * * *

(12) To, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6).

§ 31.3401(a)(12)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exception from wages.

§ 31.3401(b) Statutory provisions; definitions; payroll period.

SEC. 3401. *Definitions.* * * *

(b) *Payroll period.* For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll

period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

§ 31.3401(b)–1 Payroll period.

(a) The term "payroll period" means the period of service for which a payment of wages is ordinarily made to an employee by his employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a 3-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the calendar week, and the wage payment shall be treated as though it were three separate weekly wage payments.

(b) For the purpose of section 3402, an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a different period, the payroll period is the weekly payroll period. For computation of tax on supplemental wage payments, see § 31.3402 (g)–1.

(c) The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

§ 31.3401(c) Statutory provisions; definitions; employee.

SEC. 3401. *Definitions.* • • •

(c) *Employee.* For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

§ 31.3401(c)–1 Employee.

(a) The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401 (a).

§ 31.3401(d) Statutory provisions; definitions; employer.

SEC. 3401. *Definitions.* • • •

(d) *Employer.* For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

§ 31.3401(d)–1 Employer.

(a) The term "employer" means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

(b) It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer exist. Thus, for purposes of withholding, a person for whom an individual has performed past services for which he is still receiving wages from such person is an "employer."

(c) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(d) The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the States, Territories, Puerto Rico, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

(e) The term "employer" also means (except for the purpose of the definition of "wages") any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States).

(f) If the person for whom the services are or were performed does not have legal control of the payment of the wages for such services, the term "employer" means (except for the purpose of the definition of "wages") the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by a trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the "employer."

(g) It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax, and for furnishing the statements required under section 6051 and § 31.6051–1. The two special definitions of the term "employer" in paragraphs (e) and (f) of this section are designed solely to meet unusual situations. They are not intended as a departure from the basic purpose.

§ 31.3401(e) Statutory provisions; definitions; number of withholding exemptions claimed.

SEC. 3401. *Definitions.* • • •

(e) *Number of withholding exemptions claimed.* For purposes of this chapter, the

term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

§ 31.3401(e)–1 Number of withholding exemptions claimed.

(a) The term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f) of the Internal Revenue Code of 1954 or in effect under section 1622(h) of the Internal Revenue Code of 1939. If no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero. The number of withholding exemptions claimed must be taken into account in determining the amount of tax to be deducted and withheld under section 3402, whether the employer computes the tax in accordance with the provisions of subsection (a) or subsection (c) of section 3402.

(b) The employer is not required to ascertain whether or not the number of withholding exemptions claimed is greater than the number of withholding exemptions to which the employee is entitled. If, however, the employer has reason to believe that the number of withholding exemptions claimed by an employee is greater than the number to which such employee is entitled, the district director should be so advised.

(c) As to the number of withholding exemptions to which an employee is entitled, see § 31.3402 (f) (1)–1.

§ 31.3402(a) Statutory provisions; income tax collected at source; requirement of withholding.

SEC. 3402. *Income tax collected at source*—(a) *Requirement of withholding.* Every employer making payment of wages shall deduct and withhold upon such wages (except as provided in subsection (j)) a tax equal to 18 percent of the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in subsection (b) (1).

[Sec. 3402(a) as amended by sec. 2(a), Act of Aug. 9, 1955 (Pub. Law 306, 84th Cong., 69 Stat. 605)]

§ 31.3402(a)–1 Requirement of withholding.

(a) Section 3402 provides alternative methods, at the election of the employer, for use in computing the income tax to be collected at source on wages. Under the percentage method of withholding (see § 31.3402 (b)–1), the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 3402 (a). Under the wage bracket method of withholding (see § 31.3402 (c)–1), the employer is required to deduct and withhold a tax determined in accordance with the tables provided in section 3402 (c). The employer may elect to use the percentage method in the case of one group of employees and the wage bracket method in the case of another group of employees.

(b) The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

(c) Except as provided in section 3402 (j) (see § 31.3402 (j)–1, relating to noncash remuneration paid to retail commission salesmen), an employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 31.3401 (a)–1) and to pay over the tax in money. If wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

(d) For provisions relating to the circumstances under which tax is not required to be deducted and withheld from certain wage payments, see paragraph (b) (8) of § 31.3401 (a)–1 relating to amounts paid under wage continuation plans.

(e) As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under section 6051. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the employer. For provisions relating to statements under section 6051, see § 31.6051–1.

(f) The amount of any tax withheld and collected by the employer is a special fund in trust for the United States. See section 7501.

§ 31.3402(b) Statutory provisions; income tax collected at source; percentage method of withholding.

SEC. 3402. *Income tax collected at source.* • • • (b) *Percentage method of withholding.* (1) The table referred to in subsection (a) is as follows:

PERCENTAGE METHOD WITHHOLDING TABLE

Payroll period:	*Amount of one withholding exemption*
Weekly	$13.00
Biweekly	26.00
Semimonthly	28.00
Monthly	56.00
Quarterly	167.00
Semiannual	333.00
Annual	667.00
Daily or miscellaneous (per day of such period)	1.80

(2) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer, in computing the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period.

(5) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

§ 31.3402(b)–1 Percentage method of withholding.

(a) *In general.* (1) The percentage method of computing the amount of tax to be withheld makes use of the percentage method withholding table contained in section 3402(b)(1). This table shows with respect to each of the designated payroll periods the amount allowable for one withholding exemption. The amount of the withholding exemption allowable with respect to a particular payroll period depends upon the number of withholding exemptions claimed. The term "payroll period" is defined in section 3401 (b) (see § 31.3401 (b)–1). The term "number of withholding exemptions claimed" is defined in section 3401 (e) (see § 31.3401 (e)–1).

(2) The steps in computing the tax under the percentage method of withholding are summarized as follows:

Step 1. Determine the amount of one withholding exemption for the particular payroll period from the percentage method withholding table.

Step 2. Multiply the amount determined in Step 1 by the number of exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the employee's wages.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

The result is the amount of tax to be withheld.

Example. During a period in which the rate under the percentage method of withholding is 18 percent, an employee has a weekly payroll period, for which he is paid $75, and has in effect a withholding exemption certificate claiming three withholding

exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

Step 1:	
Amount of one withholding exemption	$13.00
Step 2:	
Multiplied by number of exemptions claimed on Form W–4	×3
Total withholding exemption	39.00
Step 3:	
Total wage payment	$75.00
Less amount determined in Step 2	39.00
Balance subject to tax	36.00
Step 4:	
Tax to be withheld (balance multiplied by 0.18)	6.48

(3) For provisions relating to the treatment of wages paid under wage continuation plans and wages paid other than in cash to retail commission salesmen, see paragraph (b) (8) of § 31.3401 (a)–1 and § 31.3402 (j)–1, respectively.

(b) *Established payroll periods, other than daily or miscellaneous, as shown in percentage method withholding table.* The amount of one withholding exemption, allowable with respect to each of the established payroll periods contained in the percentage method withholding table, is determined by reference to the line applicable to such payroll period and without reference to the time the employee is actually engaged in the performance of services during such payroll period.

Example (1). During 1955 employee C has a semimonthly payroll period. The number of withholding exemptions claimed by C is two. C's wages are determined at the rate of $1.20 per hour. During a certain payroll period he works only 40 hours and earns $48. Although C worked only 40 hours during the semimonthly payroll period, the applicable withholding exemption is $28, and the amount of two withholding exemptions, or $56, is allowable. Since the amount of the wages paid for the semimonthly payroll period is less than the amount allowed for two withholding exemptions for such period, the employer is not required to withhold any tax.

Example (2). During 1955 employee D has a weekly payroll period. The number of withholding exemptions claimed by D is two. D's wages are determined at the rate of $1.20 per hour. During a certain payroll period D works 30 hours and earns $36. Although D worked only 30 hours during the weekly payroll period, the applicable withholding exemption is $13, and the amount of two withholding exemptions, or $26, is allowable. The balance of $10 is subject to withholding.

(c) *Periods to which the daily or miscellaneous withholding exemption is applicable*—(1) *In general.* The percentage method withholding table shows for a daily or miscellaneous payroll period the amount of one withholding exemption allowable with respect to one day. For the purpose of determining the amount of tax to be withheld with respect to wages paid for a particular miscellaneous payroll period (see paragraph (c) of § 31.3401 (b)–1), the amount of one withholding exemption shown in the table for one day of such period and the wages paid for the period must be placed on a comparable basis. The amount of tax to be withheld may be determined by either of the following methods:

(i) Under the first method the following steps are taken:

Step 1. Multiply the amount shown in the percentage method withholding table as applicable per day of a miscellaneous payroll period by the number of days (including Sundays and holidays) in such period.

Step 2. Multiply the amount determined in Step 1 by the number of withholding exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the employee's wages.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

(ii) Under the second method the following steps are taken:

Step 1. Divide the wages paid to the employee for the period by the number of days (including Sundays and holidays) in the period.

Step 2. Multiply the amount shown in the percentage method withholding table as applicable per day of a miscellaneous payroll period by the number of withholding exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the amount determined in Step 1.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

Step 5. Multiply the amount determined in Step 4 by the number of days (including Sundays and holidays) in the period.

(2) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowable for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) in the period with respect to which such wages are paid.

Example. During 1955 an individual is hired by a contractor to perform services in connection with a building project. The number of withholding exemptions claimed by such individual is two. Wages are fixed at the rate of $9 per day, to be paid upon completion of the project. The project is completed during 1955 in 12 consecutive days, at the end of which period the individual is paid wages of $90 for 10 days' services performed during the period. For the purpose of computing the tax the amount of the withholding exemption allowable for the 12-day period is $43.20 (12×(2×$1.80)). Tax is required to be withheld with respect to $46.80 ($90 minus $43.20).

(3) *Wages paid without regard to any period.* In the case of wages paid to an employee without regard to any particular period, as, for example, commissions paid to a salesman upon completion of a sale, the withholding exemption is measured by the number of days (including Sundays and holidays) which have elapsed, beginning with the latest of the following days:

(i) The first day after the last payment of wages to such employee by such employer in the calendar year, or

(ii) The date on which such individual's employment with such employer began in the calendar year, or

(iii) January 1 of such calendar year, and ending with (and including) the date on which such wages are paid.

Example. On April 2, 1955, A is employed by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1955, A receives a commission of $300. Again, on June 16, 1955, A receives a commission of $400. The amount of the withholding exemption with respect to the commission paid on May 21 is $90 ($1.80×50). With respect to the commission paid on June 16, the amount of the withholding exemption is $46.80 ($1.80×26).

(d) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the withholding exemption allowable shall be the exemption allowable for a daily payroll period, or a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period or other period for which such wages are paid. The same rule is applicable in the case of wages paid without regard to a payroll period or other period, where the elapsed time as determined in accordance with the rule prescribed in paragraph (c) of this section is less than 1 week.

Example (1). During 1955 an employee having a daily payroll period is paid wages of $12 per day. The number of withholding exemptions claimed by such employee is one. The amount of each such daily wage payment subject to withholding is $10.20 ($12.00–$1.80).

Example (2). During 1955 an employee works for a certain employer on four consecutive days, for which he is paid wages of $36. The number of withholding exemptions claimed by the employee is two. The amount of the withholding exemption allowable is $14.40 (4×$3.60).

(2) Under certain conditions, if the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, at his election, compute the tax to be withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period. Such election may be made by the employer only if he is the only employer for whom the employee works for wages during the calendar week. Any employer electing to compute the tax upon the excess of the wages paid during the calendar week over the weekly exemption must secure a statement in writing from the employee, stating that he works for wages for such employer only, and that if he should thereafter secure additional employment for wages, he will within 10 days after the beginning of such additional employment, notify such employer of that fact. Such statement shall be signed by the employee and shall contain or be verified by a written declaration that it is made under the penalties of perjury. No particular form is prescribed for the statement.

Example. During 1955 an employee works for a certain employer on four consecutive days, for which he is paid wages of $36. The number of withholding exemptions claimed by the employee is two. The employer elects to use the weekly withholding exemption after securing the proper statement from the employee. In such case, the amount of the withholding exemption allowable is $26 (2×$13).

(3) If such employee secures additional employment for wages, the daily or miscellaneous exemption will take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the thirtieth day following the date on which such employee notifies such employer that he has secured additional employment for wages. After the daily or miscellaneous exemption takes effect the employer may not thereafter use the weekly exemption in computing the amount of tax to be withheld from the wages of such employee.

(4) As used in this paragraph the term "calendar week" means a period of 7 consecutive days beginning with Sunday and ending with Saturday.

(e) *Rounding off of wage payment.* In determining the amount to be deducted and withheld under the percentage method, the last digit of the wage amount may, at the election of the employer, be reduced to zero, or the wage amount may, at the election of the employer, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1.00. Thus, if the weekly wage is $45.37, the employer may, in determining the amount of tax to be deducted and withheld, determine the tax on the basis of a wage payment of $45.30 or on the basis of a wage payment of $45. If the weekly wage is $45.50, the employer may determine the tax to be deducted and withheld on the basis of a wage payment of $46.

§ 31.3402(c) Statutory provisions; income tax collected at source; wage bracket withholding.

SEC. 3402. *Income tax collected at source.* • • • (c) *Wage bracket withholding.* (1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a):

If the payroll period with respect to an employee is weekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$13	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$13	$14	$2.40	.10	0	0	0	0	0	0	0	0	0
$14	$15	2.60	.30	0	0	0	0	0	0	0	0	0
$15	$16	2.80	.50	0	0	0	0	0	0	0	0	0
$16	$17	3.00	.70	0	0	0	0	0	0	0	0	0
$17	$18	3.20	.80	0	0	0	0	0	0	0	0	0
$18	$19	3.30	1.00	0	0	0	0	0	0	0	0	0
$19	$20	3.50	1.20	0	0	0	0	0	0	0	0	0
$20	$21	3.70	1.40	0	0	0	0	0	0	0	0	0
$21	$22	3.90	1.60	0	0	0	0	0	0	0	0	0
$22	$23	4.10	1.70	0	0	0	0	0	0	0	0	0
$23	$24	4.20	1.90	0	0	0	0	0	0	0	0	0
$24	$25	4.40	2.10	0	0	0	0	0	0	0	0	0
$25	$26	4.60	2.30	0	0	0	0	0	0	0	0	0
$26	$27	4.80	2.50	.20	0	0	0	0	0	0	0	0
$27	$28	5.00	2.60	.30	0	0	0	0	0	0	0	0
$28	$29	5.10	2.80	.50	0	0	0	0	0	0	0	0
$29	$30	5.30	3.00	.70	0	0	0	0	0	0	0	0
$30	$31	5.50	3.20	.90	0	0	0	0	0	0	0	0

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$31	$32	$5.70	$3.40	$1.10	$0	$0	$0	$0	$0	$0	$0	$0
$32	$33	5.90	3.50	1.20	0	0	0	0	0	0	0	0
$33	$34	6.00	3.70	1.40	0	0	0	0	0	0	0	0
$34	$35	6.20	3.90	1.60	0	0	0	0	0	0	0	0
$35	$36	6.40	4.10	1.80	0	0	0	0	0	0	0	0
$36	$37	6.60	4.30	2.00	0	0	0	0	0	0	0	0
$37	$38	6.80	4.40	2.10	0	0	0	0	0	0	0	0
$38	$39	6.90	4.60	2.30	0	0	0	0	0	0	0	0
$39	$40	7.10	4.80	2.50	.20	0	0	0	0	0	0	0
$40	$41	7.30	5.00	2.70	.40	0	0	0	0	0	0	0
$41	$42	7.50	5.20	2.90	.50	0	0	0	0	0	0	0
$42	$43	7.70	5.30	3.00	.70	0	0	0	0	0	0	0
$43	$44	7.80	5.50	3.20	.90	0	0	0	0	0	0	0
$44	$45	8.00	5.70	3.40	1.10	0	0	0	0	0	0	0
$45	$46	8.20	5.90	3.60	1.30	0	0	0	0	0	0	0
$46	$47	8.40	6.10	3.80	1.40	0	0	0	0	0	0	0
$47	$48	8.60	6.20	3.90	1.60	0	0	0	0	0	0	0
$48	$49	8.70	6.40	4.10	1.80	0	0	0	0	0	0	0
$49	$50	8.90	6.60	4.30	2.00	0	0	0	0	0	0	0
$50	$51	9.10	6.80	4.50	2.20	0	0	0	0	0	0	0
$51	$52	9.30	7.00	4.70	2.30	0	0	0	0	0	0	0
$52	$53	9.50	7.10	4.80	2.50	.20	0	0	0	0	0	0
$53	$54	9.60	7.30	5.00	2.70	.40	0	0	0	0	0	0
$54	$55	9.80	7.50	5.20	2.90	.60	0	0	0	0	0	0
$55	$56	10.00	7.70	5.40	3.10	.80	0	0	0	0	0	0
$56	$57	10.20	7.90	5.60	3.20	.90	0	0	0	0	0	0
$57	$58	10.40	8.00	5.70	3.40	1.10	0	0	0	0	0	0
$58	$59	10.50	8.20	5.90	3.60	1.30	0	0	0	0	0	0
$59	$60	10.70	8.40	6.10	3.80	1.50	0	0	0	0	0	0
$60	$62	11.00	8.70	6.40	4.10	1.70	0	0	0	0	0	0
$62	$64	11.30	9.00	6.70	4.40	2.10	0	0	0	0	0	0
$64	$66	11.70	9.40	7.10	4.80	2.50	.20	0	0	0	0	0
$66	$68	12.10	9.80	7.40	5.10	2.80	.50	0	0	0	0	0
$68	$70	12.40	10.10	7.80	5.50	3.20	.90	0	0	0	0	0
$70	$72	12.80	10.50	8.20	5.90	3.50	1.20	0	0	0	0	0
$72	$74	13.10	10.80	8.50	6.20	3.90	1.60	0	0	0	0	0
$74	$76	13.50	11.20	8.90	6.60	4.30	2.00	0	0	0	0	0
$76	$78	13.90	11.60	9.20	6.90	4.60	2.30	0	0	0	0	0
$78	$80	14.20	11.90	9.60	7.30	5.00	2.70	.40	0	0	0	0
$80	$82	14.60	12.30	10.00	7.70	5.30	3.00	.70	0	0	0	0
$82	$84	14.90	12.60	10.30	8.00	5.70	3.40	1.10	0	0	0	0
$84	$86	15.30	13.00	10.70	8.40	6.10	3.80	1.50	0	0	0	0
$86	$88	15.70	13.40	11.00	8.70	6.40	4.10	1.80	0	0	0	0
$88	$90	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0	0	0	0
$90	$92	16.40	14.10	11.80	9.50	7.10	4.80	2.50	.20	0	0	0
$92	$94	16.70	14.40	12.10	9.80	7.50	5.20	2.90	.60	0	0	0
$94	$96	17.10	14.80	12.50	10.20	7.90	5.60	3.30	.90	0	0	0
$96	$98	17.50	15.20	12.80	10.50	8.20	5.90	3.60	1.30	0	0	0
$98	$100	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70	0	0	0
$100	$105	18.50	16.10	13.80	11.50	9.20	6.90	4.60	2.30	0	0	0
$105	$110	19.40	17.00	14.70	12.40	10.10	7.80	5.50	3.20	.90	0	0
$110	$115	20.30	17.90	15.60	13.30	11.00	8.70	6.40	4.10	1.80	0	0
$115	$120	21.20	18.80	16.50	14.20	11.90	9.60	7.30	5.00	2.70	.40	0
$120	$125	22.10	19.70	17.40	15.10	12.80	10.50	8.20	5.90	3.60	1.30	0
$125	$130	23.00	20.60	18.30	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0
$130	$135	23.90	21.50	19.20	16.90	14.60	12.30	10.00	7.70	5.40	3.10	.80
$135	$140	24.80	22.40	20.10	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70
$140	$145	25.70	23.30	21.00	18.70	16.40	14.10	11.80	9.50	7.20	4.90	2.60
$145	$150	26.60	24.20	21.90	19.60	17.30	15.00	12.70	10.40	8.10	5.80	3.50
$150	$160	27.90	25.60	23.30	21.00	18.70	16.40	14.10	11.70	9.40	7.10	4.80
$160	$170	29.70	27.40	25.10	22.80	20.50	18.20	15.90	13.50	11.20	8.90	6.60
$170	$180	31.50	29.20	26.90	24.60	22.30	20.00	17.70	15.30	13.00	10.70	8.40
$180	$190	33.30	31.00	28.70	26.40	24.10	21.80	19.50	17.10	14.80	12.50	10.20
$190	$200	35.10	32.80	30.50	28.20	25.90	23.60	21.30	18.90	16.60	14.30	12.00
		18 percent of the excess over $200 plus—										
$200 and over		36.00	33.70	31.40	29.10	26.80	24.50	22.20	19.80	17.50	15.20	12.90

If the payroll period with respect to an employee is biweekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$26	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$26	$28	$4.90	.20	0	0	0	0	0	0	0	0	0
$28	$30	5.20	.60	0	0	0	0	0	0	0	0	0
$30	$32	5.60	1.00	0	0	0	0	0	0	0	0	0
$32	$34	5.90	1.30	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.70	0	0	0	0	0	0	0	0	0
$36	$38	6.70	2.00	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.40	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.80	0	0	0	0	0	0	0	0	0
$42	$44	7.70	3.10	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.50	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.80	0	0	0	0	0	0	0	0	0
$48	$50	8.80	4.20	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.60	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.90	.30	0	0	0	0	0	0	0	0
$54	$56	9.90	5.30	.70	0	0	0	0	0	0	0	0
$56	$58	10.30	5.60	1.00	0	0	0	0	0	0	0	0
$58	$60	10.60	6.00	1.40	0	0	0	0	0	0	0	0
$60	$62	11.00	6.40	1.70	0	0	0	0	0	0	0	0
$62	$64	11.30	6.70	2.10	0	0	0	0	0	0	0	0
$64	$66	11.70	7.10	2.50	0	0	0	0	0	0	0	0
$66	$68	12.10	7.40	2.80	0	0	0	0	0	0	0	0
$68	$70	12.40	7.80	3.20	0	0	0	0	0	0	0	0
$70	$72	12.80	8.20	3.50	0	0	0	0	0	0	0	0
$72	$74	13.10	8.50	3.90	0	0	0	0	0	0	0	0
$74	$76	13.50	8.90	4.30	0	0	0	0	0	0	0	0
$76	$78	13.90	9.20	4.60	0	0	0	0	0	0	0	0
$78	$80	14.20	9.60	5.00	.40	0	0	0	0	0	0	0
$80	$82	14.60	10.00	5.30	.70	0	0	0	0	0	0	0
$82	$84	14.90	10.30	5.70	1.10	0	0	0	0	0	0	0
$84	$86	15.30	10.70	6.10	1.50	0	0	0	0	0	0	0
$86	$88	15.70	11.00	6.40	1.80	0	0	0	0	0	0	0
$88	$90	16.00	11.40	6.80	2.20	0	0	0	0	0	0	0
$90	$92	16.40	11.80	7.10	2.50	0	0	0	0	0	0	0
$92	$94	16.70	12.10	7.50	2.90	0	0	0	0	0	0	0
$94	$96	17.10	12.50	7.90	3.30	0	0	0	0	0	0	0
$96	$98	17.50	12.80	8.20	3.60	0	0	0	0	0	0	0
$98	$100	17.80	13.20	8.60	4.00	0	0	0	0	0	0	0
$100	$102	18.20	13.60	8.90	4.30	0	0	0	0	0	0	0
$102	$104	18.50	13.90	9.30	4.70	.10	0	0	0	0	0	0
$104	$106	18.90	14.30	9.70	5.10	.40	0	0	0	0	0	0
$106	$108	19.30	14.60	10.00	5.40	.80	0	0	0	0	0	0
$108	$110	19.60	15.00	10.40	5.80	1.20	0	0	0	0	0	0
$110	$112	20.00	15.40	10.70	6.10	1.50	0	0	0	0	0	0
$112	$114	20.30	15.70	11.10	6.50	1.90	0	0	0	0	0	0
$114	$116	20.70	16.10	11.50	6.90	2.20	0	0	0	0	0	0
$116	$118	21.10	16.40	11.80	7.20	2.60	0	0	0	0	0	0
$118	$120	21.40	16.80	12.20	7.60	3.00	0	0	0	0	0	0
$120	$124	22.00	17.30	12.70	8.10	3.50	0	0	0	0	0	0
$124	$128	22.70	18.10	13.40	8.80	4.20	0	0	0	0	0	0
$128	$132	23.40	18.80	14.20	9.60	4.90	.30	0	0	0	0	0
$132	$136	24.10	19.50	14.90	10.30	5.70	1.00	0	0	0	0	0
$136	$140	24.80	20.20	15.60	11.00	6.40	1.80	0	0	0	0	0
$140	$144	25.60	20.90	16.30	11.70	7.10	2.50	0	0	0	0	0
$144	$148	26.30	21.70	17.00	12.40	7.80	3.20	0	0	0	0	0
$148	$152	27.00	22.40	17.80	13.20	8.50	3.90	0	0	0	0	0
$152	$156	27.70	23.10	18.50	13.90	9.30	4.60	0	0	0	0	0
$156	$160	28.40	23.80	19.20	14.60	10.00	5.40	.70	0	0	0	0
$160	$164	29.20	24.50	19.90	15.30	10.70	6.10	1.50	0	0	0	0
$164	$168	29.90	25.30	20.60	16.00	11.40	6.80	2.20	0	0	0	0
$168	$172	30.60	26.00	21.40	16.80	12.10	7.50	2.90	0	0	0	0
$172	$176	31.30	26.70	22.10	17.50	12.90	8.20	3.60	0	0	0	0
$176	$180	32.00	27.40	22.80	18.20	13.60	9.00	4.30	0	0	0	0
$180	$184	32.80	28.10	23.50	18.90	14.30	9.70	5.10	.50	0	0	0
$184	$188	33.50	28.90	24.20	19.60	15.00	10.40	5.80	1.20	0	0	0
$188	$192	34.20	29.60	25.00	20.40	15.70	11.10	6.50	1.90	0	0	0
$192	$196	34.90	30.30	25.70	21.10	16.50	11.80	7.20	2.60	0	0	0
$196	$200	35.60	31.00	26.40	21.80	17.20	12.60	7.90	3.30	0	0	0
$200	$210	36.90	32.30	27.70	23.10	18.40	13.80	9.20	4.60	0	0	0
$210	$220	38.70	34.10	29.50	24.90	20.20	15.60	11.00	6.40	1.80	0	0
$220	$230	40.50	35.90	31.30	26.70	22.00	17.40	12.80	8.20	3.60	0	0
$230	$240	42.30	37.70	33.10	28.50	23.80	19.20	14.60	10.00	5.40	.80	0
$240	$250	44.10	39.50	34.90	30.30	25.60	21.00	16.40	11.80	7.20	2.60	0
$250	$260	45.90	41.30	36.70	32.10	27.40	22.80	18.20	13.60	9.00	4.40	0
$260	$270	47.70	43.10	38.50	33.90	29.20	24.60	20.00	15.40	10.80	6.20	1.50
$270	$280	49.50	44.90	40.30	35.70	31.00	26.40	21.80	17.20	12.60	8.00	3.30
$280	$290	51.30	46.70	42.10	37.50	32.80	28.20	23.60	19.00	14.40	9.80	5.10
$290	$300	53.10	48.50	43.90	39.30	34.60	30.00	25.40	20.80	16.20	11.60	6.90
$300	$320	55.80	51.20	46.60	42.00	37.30	32.70	28.10	23.50	18.90	14.30	9.60
$320	$340	59.40	54.80	50.20	45.60	40.90	36.30	31.70	27.10	22.50	17.90	13.20
$340	$360	63.00	58.40	53.80	49.20	44.50	39.90	35.30	30.70	26.10	21.50	16.80
$360	$380	66.60	62.00	57.40	52.80	48.10	43.50	38.90	34.30	29.70	25.10	20.40
$380	$400	70.20	65.60	61.00	56.40	51.70	47.10	42.50	37.90	33.30	28.70	24.00
		18 percent of the excess over $400 plus—										
$400 and over		72.00	67.40	62.80	58.20	53.50	48.90	44.30	39.70	35.10	30.50	25.80

If the payroll period with respect to an employee is semimonthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$28	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$28	$30	$5.20	.20	0	0	0	0	0	0	0	0	0
$30	$32	5.60	.60	0	0	0	0	0	0	0	0	0
$32	$34	5.90	.90	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.30	0	0	0	0	0	0	0	0	0
$36	$38	6.70	1.70	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.00	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.40	0	0	0	0	0	0	0	0	0
$42	$44	7.70	2.70	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.10	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.50	0	0	0	0	0	0	0	0	0
$48	$50	8.80	3.80	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.20	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.50	0	0	0	0	0	0	0	0	0
$54	$56	9.90	4.90	0	0	0	0	0	0	0	0	0
$56	$58	10.30	5.30	.30	0	0	0	0	0	0	0	0
$58	$60	10.60	5.60	.60	0	0	0	0	0	0	0	0
$60	$62	11.00	6.00	1.00	0	0	0	0	0	0	0	0
$62	$64	11.30	6.30	1.30	0	0	0	0	0	0	0	0
$64	$66	11.70	6.70	1.70	0	0	0	0	0	0	0	0
$66	$68	12.10	7.10	2.10	0	0	0	0	0	0	0	0
$68	$70	12.40	7.40	2.40	0	0	0	0	0	0	0	0
$70	$72	12.80	7.80	2.80	0	0	0	0	0	0	0	0
$72	$74	13.10	8.10	3.10	0	0	0	0	0	0	0	0
$74	$76	13.50	8.50	3.50	0	0	0	0	0	0	0	0
$76	$78	13.90	8.90	3.90	0	0	0	0	0	0	0	0
$78	$80	14.20	9.20	4.20	0	0	0	0	0	0	0	0
$80	$82	14.60	9.60	4.60	0	0	0	0	0	0	0	0
$82	$84	14.90	9.90	4.90	0	0	0	0	0	0	0	0
$84	$86	15.30	10.30	5.30	.30	0	0	0	0	0	0	0
$86	$88	15.70	10.70	5.70	.70	0	0	0	0	0	0	0
$88	$90	16.00	11.00	6.00	1.00	0	0	0	0	0	0	0
$90	$92	16.40	11.40	6.40	1.40	0	0	0	0	0	0	0
$92	$94	16.70	11.70	6.70	1.70	0	0	0	0	0	0	0
$94	$96	17.10	12.10	7.10	2.10	0	0	0	0	0	0	0
$96	$98	17.50	12.50	7.50	2.50	0	0	0	0	0	0	0
$98	$100	17.80	12.80	7.80	2.80	0	0	0	0	0	0	0
$100	$102	18.20	13.20	8.20	3.20	0	0	0	0	0	0	0
$102	$104	18.50	13.50	8.50	3.50	0	0	0	0	0	0	0
$104	$106	18.90	13.90	8.90	3.90	0	0	0	0	0	0	0
$106	$108	19.30	14.30	9.30	4.30	0	0	0	0	0	0	0
$108	$110	19.60	14.60	9.60	4.60	0	0	0	0	0	0	0
$110	$112	20.00	15.00	10.00	5.00	0	0	0	0	0	0	0
$112	$114	20.30	15.30	10.30	5.30	.30	0	0	0	0	0	0
$114	$116	20.70	15.70	10.70	5.70	.70	0	0	0	0	0	0
$116	$118	21.10	16.10	11.10	6.10	1.10	0	0	0	0	0	0
$118	$120	21.40	16.40	11.40	6.40	1.40	0	0	0	0	0	0
$120	$124	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0	0

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$124	$128	$22.70	$17.70	$12.70	$7.70	$2.70	$0	$0	$0	$0	$0	$0
$128	$132	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0	0
$132	$136	24.10	19.10	14.10	9.10	4.10	0	0	0	0	0	0
$136	$140	24.80	19.80	14.80	9.80	4.80	0	0	0	0	0	0
$140	$144	25.60	20.60	15.60	10.60	5.60	.60	0	0	0	0	0
$144	$148	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0	0
$148	$152	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0
$152	$156	27.70	22.70	17.70	12.70	7.70	2.70	0	0	0	0	0
$156	$160	28.40	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0
$160	$164	29.20	24.20	19.20	14.20	9.20	4.20	0	0	0	0	0
$164	$168	29.90	24.90	19.90	14.90	9.90	4.90	0	0	0	0	0
$168	$172	30.60	25.60	20.60	15.60	10.60	5.60	.60	0	0	0	0
$172	$176	31.30	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0
$176	$180	32.00	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0	0
$180	$184	32.80	27.80	22.80	17.80	12.80	7.80	2.80	0	0	0	0
$184	$188	33.50	28.50	23.50	18.50	13.50	8.50	3.50	0	0	0	0
$188	$192	34.20	29.20	24.20	19.20	14.20	9.20	4.20	0	0	0	0
$192	$196	34.90	29.90	24.90	19.90	14.90	9.90	4.90	0	0	0	0
$196	$200	35.60	30.60	25.60	20.60	15.60	10.60	5.60	.60	0	0	0
$200	$210	36.90	31.90	26.90	21.90	16.90	11.90	6.90	1.90	0	0	0
$210	$220	38.70	33.70	28.70	23.70	18.70	13.70	8.70	3.70	0	0	0
$220	$230	40.50	35.50	30.50	25.50	20.50	15.50	10.50	5.50	.50	0	0
$230	$240	42.30	37.30	32.30	27.30	22.30	17.30	12.30	7.30	2.30	0	0
$240	$250	44.10	39.10	34.10	29.10	24.10	19.10	14.10	9.10	4.10	0	0
$250	$260	45.90	40.90	35.90	30.90	25.90	20.90	15.90	10.90	5.90	.90	0
$260	$270	47.70	42.70	37.70	32.70	27.70	22.70	17.70	12.70	7.70	2.70	0
$270	$280	49.50	44.50	39.50	34.50	29.50	24.50	19.50	14.50	9.50	4.50	0
$280	$290	51.30	46.30	41.30	36.30	31.30	26.30	21.30	16.30	11.30	6.30	1.30
$290	$300	53.10	48.10	43.10	38.10	33.10	28.10	23.10	18.10	13.10	8.10	3.10
$300	$320	55.80	50.80	45.80	40.80	35.80	30.80	25.80	20.80	15.80	10.80	5.80
$320	$340	59.40	54.40	49.40	44.40	39.40	34.40	29.40	24.40	19.40	14.40	9.40
$340	$360	63.00	58.00	53.00	48.00	43.00	38.00	33.00	28.00	23.00	18.00	13.00
$360	$380	66.60	61.60	56.60	51.60	46.60	41.60	36.60	31.60	26.60	21.60	16.60
$380	$400	70.20	65.20	60.20	55.20	50.20	45.20	40.20	35.20	30.20	25.20	20.20
$400	$420	73.80	68.80	63.80	58.80	53.80	48.80	43.80	38.80	33.80	28.80	23.80
$420	$440	77.40	72.40	67.40	62.40	57.40	52.40	47.40	42.40	37.40	32.40	27.40
$440	$460	81.00	76.00	71.00	66.00	61.00	56.00	51.00	46.00	41.00	36.00	31.00
$460	$480	84.60	79.60	74.60	69.60	64.60	59.60	54.60	49.60	44.60	39.60	34.60
$480	$500	88.20	83.20	78.20	73.20	68.20	63.20	58.20	53.20	48.20	43.20	38.20
		18 percent of the excess over $500 plus—										
$500 and over		90.00	85.00	80.00	75.00	70.00	65.00	60.00	55.00	50.00	45.00	40.00

If the payroll period with respect to an employee is monthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$10.40	.40	0	0	0	0	0	0	0	0	0
$60	$64	11.20	1.20	0	0	0	0	0	0	0	0	0
$64	$68	11.90	1.90	0	0	0	0	0	0	0	0	0
$68	$72	12.60	2.60	0	0	0	0	0	0	0	0	0
$72	$76	13.30	3.30	0	0	0	0	0	0	0	0	0
$76	$80	14.00	4.00	0	0	0	0	0	0	0	0	0
$80	$84	14.80	4.80	0	0	0	0	0	0	0	0	0
$84	$88	15.50	5.50	0	0	0	0	0	0	0	0	0
$88	$92	16.20	6.20	0	0	0	0	0	0	0	0	0
$92	$96	16.90	6.90	0	0	0	0	0	0	0	0	0
$96	$100	17.60	7.60	0	0	0	0	0	0	0	0	0
$100	$104	18.40	8.40	0	0	0	0	0	0	0	0	0
$104	$108	19.10	9.10	0	0	0	0	0	0	0	0	0
$108	$112	19.80	9.80	0	0	0	0	0	0	0	0	0
$112	$116	20.50	10.50	.50	0	0	0	0	0	0	0	0
$116	$120	21.20	11.20	1.20	0	0	0	0	0	0	0	0

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$120	$124	$22.00	$12.00	$2.00	$0	$0	$0	$0	$0	$0	$0	$0
$124	$128	22.70	12.70	2.70	0	0	0	0	0	0	0	0
$128	$132	23.40	13.40	3.40	0	0	0	0	0	0	0	0
$132	$136	24.10	14.10	4.10	0	0	0	0	0	0	0	0
$136	$140	24.80	14.80	4.80	0	0	0	0	0	0	0	0
$140	$144	25.60	15.60	5.60	0	0	0	0	0	0	0	0
$144	$148	26.30	16.30	6.30	0	0	0	0	0	0	0	0
$148	$152	27.00	17.00	7.00	0	0	0	0	0	0	0	0
$152	$156	27.70	17.70	7.70	0	0	0	0	0	0	0	0
$156	$160	28.40	18.40	8.40	0	0	0	0	0	0	0	0
$160	$164	29.20	19.20	9.20	0	0	0	0	0	0	0	0
$164	$168	29.90	19.90	9.90	0	0	0	0	0	0	0	0
$168	$172	30.60	20.60	10.60	.60	0	0	0	0	0	0	0
$172	$176	31.30	21.30	11.30	1.30	0	0	0	0	0	0	0
$176	$180	32.00	22.00	12.00	2.00	0	0	0	0	0	0	0
$180	$184	32.80	22.80	12.80	2.80	0	0	0	0	0	0	0
$184	$188	33.50	23.50	13.50	3.50	0	0	0	0	0	0	0
$188	$192	34.20	24.20	14.20	4.20	0	0	0	0	0	0	0
$192	$196	34.90	24.90	14.90	4.90	0	0	0	0	0	0	0
$196	$200	35.60	25.60	15.60	5.60	0	0	0	0	0	0	0
$200	$204	36.40	26.40	16.40	6.40	0	0	0	0	0	0	0
$204	$208	37.10	27.10	17.10	7.10	0	0	0	0	0	0	0
$208	$212	37.80	27.80	17.80	7.80	0	0	0	0	0	0	0
$212	$216	38.50	28.50	18.50	8.50	0	0	0	0	0	0	0
$216	$220	39.20	29.20	19.20	9.20	0	0	0	0	0	0	0
$220	$224	40.00	30.00	20.00	10.00	0	0	0	0	0	0	0
$224	$228	40.70	30.70	20.70	10.70	.70	0	0	0	0	0	0
$228	$232	41.40	31.40	21.40	11.40	1.40	0	0	0	0	0	0
$232	$236	42.10	32.10	22.10	12.10	2.10	0	0	0	0	0	0
$236	$240	42.80	32.80	22.80	12.80	2.80	0	0	0	0	0	0
$240	$248	43.90	33.90	23.90	13.90	3.90	0	0	0	0	0	0
$248	$256	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0	0
$256	$264	46.80	36.80	26.80	16.80	6.80	0	0	0	0	0	0
$264	$272	48.20	38.20	28.20	18.20	8.20	0	0	0	0	0	0
$272	$280	49.70	39.70	29.70	19.70	9.70	0	0	0	0	0	0
$280	$288	51.10	41.10	31.10	21.10	11.10	1.10	0	0	0	0	0
$288	$296	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0	0
$296	$304	54.00	44.00	34.00	24.00	14.00	4.00	0	0	0	0	0
$304	$312	55.40	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0
$312	$320	56.90	46.90	36.90	26.90	16.90	6.90	0	0	0	0	0
$320	$328	58.30	48.30	38.30	28.30	18.30	8.30	0	0	0	0	0
$328	$336	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0	0
$336	$344	61.20	51.20	41.20	31.20	21.20	11.20	1.20	0	0	0	0
$344	$352	62.60	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0
$352	$360	64.10	54.10	44.10	34.10	24.10	14.10	4.10	0	0	0	0
$360	$368	65.50	55.50	45.50	35.50	25.50	15.50	5.50	0	0	0	0
$368	$376	67.00	57.00	47.00	37.00	27.00	17.00	7.00	0	0	0	0
$376	$384	68.40	58.40	48.40	38.40	28.40	18.40	8.40	0	0	0	0
$384	$392	69.80	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0
$392	$400	71.30	61.30	51.30	41.30	31.30	21.30	11.30	1.30	0	0	0
$400	$420	73.80	63.80	53.80	43.80	33.80	23.80	13.80	3.80	0	0	0
$420	$440	77.40	67.40	57.40	47.40	37.40	27.40	17.40	7.40	0	0	0
$440	$460	81.00	71.00	61.00	51.00	41.00	31.00	21.00	11.00	1.00	0	0
$460	$480	84.60	74.60	64.60	54.60	44.60	34.60	24.60	14.60	4.60	0	0
$480	$500	88.20	78.20	68.20	58.20	48.20	38.20	28.20	18.20	8.20	0	0
$500	$520	91.80	81.80	71.80	61.80	51.80	41.80	31.80	21.80	11.80	1.80	0
$520	$540	95.40	85.40	75.40	65.40	55.40	45.40	35.40	25.40	15.40	5.40	0
$540	$560	99.00	89.00	79.00	69.00	59.00	49.00	39.00	29.00	19.00	9.00	0
$560	$580	102.60	92.60	82.60	72.60	62.60	52.60	42.60	32.60	22.60	12.60	2.60
$580	$600	106.20	96.20	86.20	76.20	66.20	56.20	46.20	36.20	26.20	16.20	6.20
$600	$640	111.60	101.60	91.60	81.60	71.60	61.60	51.60	41.60	31.60	21.60	11.60
$640	$680	118.80	108.80	98.80	88.80	78.80	68.80	58.80	48.80	38.80	28.80	18.80
$680	$720	126.00	116.00	106.00	96.00	86.00	76.00	66.00	56.00	46.00	36.00	26.00
$720	$760	133.20	123.20	113.20	103.20	93.20	83.20	73.20	63.20	53.20	43.20	33.20
$760	$800	140.40	130.40	120.40	110.40	100.40	90.40	80.40	70.40	60.40	50.40	40.40
$800	$840	147.60	137.60	127.60	117.60	107.60	97.60	87.60	77.60	67.60	57.60	47.60
$840	$880	154.80	144.80	134.80	124.80	114.80	104.80	94.80	84.80	74.80	64.80	54.80
$880	$920	162.00	152.00	142.00	132.00	122.00	112.00	102.00	92.00	82.00	72.00	62.00
$920	$960	169.20	159.20	149.20	139.20	129.20	119.20	109.20	99.20	89.20	79.20	69.20
$960	$1,000	176.40	166.40	156.40	146.40	136.40	126.40	116.40	106.40	96.40	86.40	76.40
		18 percent of the excess over $1,000 plus—										
$1,000 and over		180.00	170.00	160.00	150.00	140.00	130.00	120.00	110.00	100.00	90.00	80.00

If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period—

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least—	But less than—	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$0	$2.00	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2.00	$2.25	$0.40	.05	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.45	.10	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.45	.15	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.50	.20	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.55	.25	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.60	.30	0	0	0	0	0	0	0	0	0
$3.50	$3.75	.65	.30	0	0	0	0	0	0	0	0	0
$3.75	$4.00	.70	.35	.05	0	0	0	0	0	0	0	0
$4.00	$4.25	.75	.40	.10	0	0	0	0	0	0	0	0
$4.25	$4.50	.80	.45	.15	0	0	0	0	0	0	0	0
$4.50	$4.75	.85	.50	.15	0	0	0	0	0	0	0	0
$4.75	$5.00	.90	.55	.20	0	0	0	0	0	0	0	0
$5.00	$5.25	.90	.60	.25	0	0	0	0	0	0	0	0
$5.25	$5.50	.95	.65	.30	0	0	0	0	0	0	0	0
$5.50	$5.75	1.00	.70	.35	.05	0	0	0	0	0	0	0
$5.75	$6.00	1.05	.75	.40	.05	0	0	0	0	0	0	0
$6.00	$6.25	1.10	.75	.45	.10	0	0	0	0	0	0	0
$6.25	$6.50	1.15	.80	.50	.15	0	0	0	0	0	0	0
$6.50	$6.75	1.20	.85	.55	.20	0	0	0	0	0	0	0
$6.75	$7.00	1.25	.90	.60	.25	0	0	0	0	0	0	0
$7.00	$7.25	1.30	.95	.60	.30	0	0	0	0	0	0	0
$7.25	$7.50	1.35	1.00	.65	.35	0	0	0	0	0	0	0
$7.50	$7.75	1.35	1.05	.70	.40	.05	0	0	0	0	0	0
$7.75	$8.00	1.40	1.10	.75	.45	.10	0	0	0	0	0	0
$8.00	$8.25	1.45	1.15	.80	.50	.15	0	0	0	0	0	0
$8.25	$8.50	1.50	1.20	.85	.50	.20	0	0	0	0	0	0
$8.50	$8.75	1.55	1.20	.90	.55	.25	0	0	0	0	0	0
$8.75	$9.00	1.60	1.25	.95	.60	.30	0	0	0	0	0	0
$9.00	$9.25	1.65	1.30	1.00	.65	.35	0	0	0	0	0	0
$9.25	$9.50	1.70	1.35	1.05	.70	.35	.05	0	0	0	0	0
$9.50	$9.75	1.75	1.40	1.05	.75	.40	.10	0	0	0	0	0
$9.75	$10.00	1.80	1.45	1.10	.80	.45	.15	0	0	0	0	0
$10.00	$10.50	1.85	1.50	1.20	.85	.55	.20	0	0	0	0	0
$10.50	$11.00	1.95	1.60	1.30	.95	.60	.30	0	0	0	0	0
$11.00	$11.50	2.05	1.70	1.35	1.05	.70	.40	.05	0	0	0	0
$11.50	$12.00	2.10	1.80	1.45	1.15	.80	.45	.15	0	0	0	0
$12.00	$12.50	2.20	1.90	1.55	1.20	.90	.55	.25	0	0	0	0
$12.50	$13.00	2.30	1.95	1.65	1.30	1.00	.65	.30	0	0	0	0
$13.00	$13.50	2.40	2.05	1.75	1.40	1.05	.75	.40	.10	0	0	0
$13.50	$14.00	2.50	2.15	1.80	1.50	1.15	.85	.50	.15	0	0	0
$14.00	$14.50	2.55	2.25	1.90	1.60	1.25	.90	.60	.25	0	0	0
$14.50	$15.00	2.65	2.35	2.00	1.65	1.35	1.00	.70	.35	0	0	0
$15.00	$15.50	2.75	2.40	2.10	1.75	1.45	1.10	.75	.45	.10	0	0
$15.50	$16.00	2.85	2.50	2.20	1.85	1.50	1.20	.85	.55	.20	0	0
$16.00	$16.50	2.95	2.60	2.25	1.95	1.60	1.30	.95	.60	.30	0	0
$16.50	$17.00	3.00	2.70	2.35	2.05	1.70	1.35	1.05	.70	.40	.05	0
$17.00	$17.50	3.10	2.80	2.45	2.10	1.80	1.45	1.15	.80	.45	.15	0
$17.50	$18.00	3.20	2.85	2.55	2.20	1.90	1.55	1.20	.90	.55	.25	0
$18.00	$18.50	3.30	2.95	2.65	2.30	1.95	1.65	1.30	1.00	.65	.35	0
$18.50	$19.00	3.40	3.05	2.70	2.40	2.05	1.75	1.40	1.05	.75	.40	.10
$19.00	$19.50	3.45	3.15	2.80	2.50	2.15	1.80	1.50	1.15	.85	.50	.20
$19.50	$20.00	3.55	3.25	2.90	2.55	2.25	1.90	1.60	1.25	.90	.60	.25
$20.00	$21.00	3.70	3.35	3.05	2.70	2.35	2.05	1.70	1.40	1.05	.75	.40
$21.00	$22.00	3.85	3.55	3.20	2.90	2.55	2.25	1.90	1.55	1.25	.90	.60
$22.00	$23.00	4.05	3.70	3.40	3.05	2.75	2.40	2.10	1.75	1.40	1.10	.75
$23.00	$24.00	4.25	3.90	3.55	3.25	2.90	2.60	2.25	1.95	1.60	1.25	.95
$24.00	$25.00	4.40	4.10	3.75	3.40	3.10	2.75	2.45	2.10	1.80	1.45	1.10
$25.00	$26.00	4.60	4.25	3.95	3.60	3.25	2.95	2.60	2.30	1.95	1.65	1.30
$26.00	$27.00	4.75	4.45	4.10	3.80	3.45	3.15	2.80	2.45	2.15	1.80	1.50
$27.00	$28.00	4.95	4.60	4.30	3.95	3.65	3.30	3.00	2.65	2.30	2.00	1.65
$28.00	$29.00	5.15	4.80	4.45	4.15	3.80	3.50	3.15	2.85	2.50	2.15	1.85
$29.00	$30.00	5.30	5.00	4.65	4.30	4.00	3.65	3.35	3.00	2.70	2.35	2.00
		18 percent of the excess over $30 plus—										
$30.00 and over		5.40	5.05	4.75	4.40	4.10	3.75	3.45	3.10	2.75	2.45	2.10

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

§ 31.3402(c)–1 Wage bracket withholding.

(a) *In general.* (1) The employer may elect to use the wage bracket method provided in section 3402 (c) instead of the percentage method with respect to any employee. The tax computed under the wage bracket method shall be in lieu of the tax required to be deducted and withheld under section 3402 (a). Wage bracket withholding tables for weekly, biweekly, semimonthly, monthly, and daily or miscellaneous payroll periods are contained in section 3402 (c).

(2) For provisions relating to the treatment of wages paid under wage continuation plans and wages paid other than in cash to retail commission salesmen, see paragraph (b) (8) of § 31.3401 (a)–1 and § 31.3402 (j)–1, respectively.

(b) *Established payroll periods, other than daily or miscellaneous, covered by wage bracket withholding tables.* The wage bracket withholding tables contained in section 3402 (c) for established payroll periods other than daily or miscellaneous should be used in determining the tax to be withheld for any such period without reference to the time the employee is actually engaged in the performance of services during such payroll period.

Example (1). During 1955 employee C has a semimonthly payroll period. The number of withholding exemptions claimed by C is two. During a certain payroll period C works only 40 hours and earns $48. Although C worked only 40 hours during the semimonthly payroll period, the wage bracket withholding table for a semimonthly payroll period should be used in determining the tax to be withheld. Under this table it will be found that no tax is required to be withheld from a wage payment of $48 when two withholding exemptions are claimed.

Example (2). During 1955 employee D has a weekly payroll period. The number of withholding exemptions claimed by D is two. D's wages are determined at the rate of $1.20 per hour. During a certain payroll period D works 30 hours and earns $36. Although D worked only 30 hours during the weekly payroll period, the wage bracket withholding table for a weekly payroll period should be used in determining the tax to be withheld. Under this table it will be found that $2.00 is the amount of tax to be withheld from a wage payment of $36 when two withholding exemptions are claimed.

(c) *Periods to which the table for a daily or miscellaneous payroll period is applicable*—(1) *In general.* The table applicable to a daily or miscellaneous payroll period shows the tax on the amount of wages for one day. Where the withholding is computed under the rules applicable to a miscellaneous payroll period, the wages and the amounts shown in the table must be placed on a comparable basis. This may be accomplished by reducing the wages paid for the period to a daily basis by dividing the total wages by the number of days (including Sundays and holidays) in the period. The amount of the tax shown in the table as the tax required to be withheld from the wages, as so reduced to a daily basis, should then be multiplied by the number of days (including Sundays and holidays) in the period.

(2) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage

bracket method shall be the amount applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) in the period with respect to which such wages are paid.

Example. During 1955, an individual is hired by a contractor to perform services in connection with a construction project. The number of withholding exemptions claimed by the individual is two. Wages are fixed at the rate of $9 per day, to be paid upon completion of the project. The project is completed during 1955 in 12 days, at the end of which period the individual is paid wages of $90 for ten days' services performed during the period. Under the wage bracket method the amount to be deducted and withheld from such wages is determined by dividing the amount of the wages ($90) by the number of days in the period (12), the result being $7.50. The amount of tax required to be withheld is determined under the table applicable to a miscellaneous payroll period. Under this table the tax required to be withheld is $8.40 (12×$0.70).

(3) *Wages paid without regard to any period.* If wages are paid to an employee without regard to any particular period, as, for example, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) which have elapsed, beginning with the latest of the following days:

(i) The first day after the last payment of wages to such employee by such employer in the calendar year, or

(ii) The date on which such individual's employment with such employer began in the calendar year, or

(iii) January 1 of such calendar year,

and ending with (and including) the date on which such wages are paid.

Example. On April 2, 1955, A is employed by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1955, A receives a commission of $300. Again, on June 16, 1955, A receives a commission of $400. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 21, is $37.50, which amount is obtained by multiplying $0.75 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least $6 but less than $6.25 a day) by 50 (number of days elapsed); and the amount of tax to be withheld with respect to the commission paid on June 16 is $62.40, which amount is obtained by multiplying $2.40 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least $15 but less than $15.50 a day) by 26 (number of days elapsed).

(d) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the tax to be deducted and withheld under the wage bracket method shall be the amount computed for a daily payroll period, or for a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period, or other period, for which such wages are paid. In the case of wages paid without regard to any period, if the elapsed time computed as provided in paragraph (c) of this section is less than 1 week, the same rule is applicable.

Example (1). During 1955 an employee having a daily payroll period is paid wages of $7 per day. The number of withholding exemptions claimed by the employee is one. Under the table applicable to a daily payroll period, the amount of tax to be deducted and withheld from each such payment of wages is $0.95.

Example (2). During 1955 an individual is employed for four days, for which he is paid wages of $36. The number of withholding exemptions claimed by him is two. The amount of tax to be deducted and withheld under the wage bracket method is $4.00 (4×$1.00).

(2) If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week. The election to use the weekly wage table in such cases is subject to the limitations and conditions prescribed in paragraph (d) of § 31.3402 (b)–1 with respect to employers using the percentage method in similar cases.

(3) As used in this paragraph the term "calendar week" means a period of seven consecutive days beginning with Sunday and ending with Saturday.

(e) *Rounding off of wage payment.* In determining the amount to be deducted and withheld under the wage bracket method the wages may, at the election of the employer, be computed to the nearest dollar, provided such wages are in excess of the highest wage bracket of the applicable table. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1.00. Thus, if the payroll period of an employee is weekly and the wage payment of such employee is $255.49, the employer may compute the tax on the excess over $200 as if the excess were $55 instead of $55.49. If the weekly wage payment is $255.50, the employer may, in computing the tax, consider the excess over $200 to be $56 instead of $55.50.

§ 31.3402(d) Statutory provisions; income tax collected at source; tax paid by recipient.

SEC. 3402. *Income tax collected at surce.*

* * *

(d) *Tax paid by recipient.* If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

§ 31.3402(d)–1 Failure to withhold.

If the employer in violation of the provisions of section 3402 fails to deduct and withhold the tax, and thereafter the income tax against which the tax under section 3402 may be credited is paid, the tax under section 3402 shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties or additions to the tax applicable in respect of such failure to deduct and withhold. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax against which the tax under section 3402 may be credited has been paid. See § 31.3403–1, relating to liability for tax.

§ 31.3402(e) Statutory provisions; income tax collected at source; included and excluded wages.

SEC. 3402. *Income tax collected at source.*

* * *

(e) *Included and excluded wages.* If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

§ 31.3402(e)–1 Included and excluded wages.

(a) If a portion of the remuneration paid by an employer to his employee for services performed during a payroll period of not more than 31 consecutive days constitutes wages, and the remainder does not constitute wages, all the remuneration paid the employee for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under section 3401 (a) constitutes wages, and the time during which he performs services, the remuneration for which under such section does not constitute wages, determine whether all the remuneration for services performed during the payroll period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which constitutes wages, then all the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(c) If less than one-half of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which constitutes wages, then none of the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). Employer B, who operates a store and a farm, employs A to perform services in connection with both operations. The remuneration paid A for services on the farm is excepted as remuneration for agricultural labor, and the remuneration for services performed in the store constitutes wages. Employee A is paid on a monthly basis. During a particular month, A works 120 hours on the farm and 80 hours in the store. None of the remuneration paid by B to A for services performed during the month is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the month constitutes wages. During another month A works 75 hours on the farm and 120 hours in the store. All of the remuneration paid by B to A for services performed during the month is deemed to be wages since the remuneration paid for one-half or more of the services performed during the month constitutes wages.

Example (2). Employee C is employed as a maid by D, a physician, whose home and office are located in the same building. The remuneration paid C for services in the home is excepted as remuneration for domestic service, and the remuneration paid for her services in the office constitutes wages. C is paid on a weekly basis. During a particular week C works 20 hours in the home and 20 hours in the office. All of the remuneration paid by D to C for services performed during that week is deemed to be wages, since the remuneration paid for one-half or more of the services performed during the week constitutes wages. During another week C works 22 hours in the home and 15 hours in the office. None of the remuneration paid by D to C for services performed during that week is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the week constitutes wages.

(e) The rules set forth in this section do not apply (1) with respect to any remuneration paid for services performed by an employee for his employer if the periods for which remuneration is paid by the employer vary to the extent that there is no period which constitutes a payroll period within the meaning of section 3401 (b) (see § 31.3401 (b)–1), or (2) with respect to any remuneration paid for services performed by an employee for his employer if the payroll period for which remuneration is paid exceeds 31 consecutive days. In any such case withholding is required with respect to that portion of such remuneration which constitutes wages.

§ 31.3402(f)(1) Statutory provisions; income tax collected at source; withholding exemptions.

SEC. 3402. *Income tax collected at source.*

* * *

(f) *Withholding exemptions*—(1) *In general.* An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) An exemption for himself;

(B) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (c) (1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(C) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (d) (1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) If the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption; and

(E) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (e) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit.

§31.3402(f)(1)–1 Withholding exemptions.

(a) *In general.* (1) An employee receiving wages shall on any day be entitled to withholding exemptions as provided in section 3402 (f) (1). In order to receive the benefit of such exemptions, the employee must file with his employer a withholding exemption certificate as provided in section 3402 (f) (2). See § 31.3402 (f) (2)–1.

(2) The number of exemptions to which an employee is entitled on any day depends upon his status as single or married, upon his status as to old age and blindness, upon the number of his dependents, and, if married, upon the number of exemptions claimed by his spouse.

(b) *Withholding exemptions to which an employee is entitled in respect of himself.* An employee is entitled to one withholding exemption for himself. An employee shall on any day be entitled to an additional withholding exemption for himself if he will have attained the age of 65 before the close of his taxable year which begins in, or with, the calendar year in which such day falls. If the employee is blind, he may claim an additional withholding exemption for blindness. For purposes of claiming a withholding exemption for blindness, an individual shall be considered blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. For definition of the term "blindness", see section 151 (d) (3).

(c) *Withholding exemptions to which an employee is entitled in respect of his spouse.* (1) A married employee, whose spouse is an employee receiving wages, is entitled to claim any withholding exemption to which his spouse is entitled under paragraph (b) of this section, unless the spouse has in effect a withholding exemption certificate claiming such withholding exemption. A married employee, whose spouse is not an employee receiving wages, is entitled to claim any withholding exemption to which his spouse would be entitled under paragraph (b) of this section if the spouse were an employee receiving wages.

Example (1). Assume that both the husband and wife have attained the age of 65 and are employees receiving wages. Each spouse is entitled under paragraph (b) of this section to claim 2 withholding exemptions in respect of himself or herself. Either spouse may claim, in addition to the withholding exemptions to which he or she is entitled in respect of himself or herself, any withholding exemption to which the other spouse is entitled under such paragraph (b) but does not claim on a withholding exemption certificate.

Example (2). Assume the same facts as in Example (1) except that only the husband is an employee receiving wages. The husband is entitled to claim 4 withholding exemptions, that is, the 2 withholding exemptions to which he is entitled in respect of himself and the 2 withholding exemptions to which his spouse would be entitled under paragraph (b) of this section if she were an employee receiving wages.

(2) In determining the number of withholding exemptions to which an employee is entitled for himself and his spouse on any day, the employee's status as a single person or a married person and, if married, whether a withholding exemption is claimed by his spouse shall be determined as of such day. However, in the case of an employee whose spouse dies in the taxable year of the employee which begins in, or with, the calendar year in which the spouse dies, any withholding exemption which would be allowable to the employee in respect of such spouse, if living and not an employee receiving wages, may be claimed by the employee for that portion of the calendar year which occurs after his spouse's death. For provisions applicable in the case of an employee whose taxable year is not a calendar year, and whose spouse dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year, see paragraph (b) of § 31.3402 (f) (2)–1.

(d) *Withholding exemptions to which an employee is entitled in respect of dependents.* Subject to the limitations stated in this paragraph, an employee shall be entitled on any day to a withholding exemption for each individual who may reasonably be expected to be his dependent for his taxable year beginning in, or with, the calendar year in which such day falls. For purposes of the withholding exemption for an individual who may reasonably be expected to be a dependent, the following rules shall apply:

(1) The determination that an individual may or may not reasonably be expected to be a dependent shall be made on the basis of facts existing at the beginning of the day for which a withholding exemption for such individual is to be claimed. The individual in respect of whom an exemption is claimed by an employee must, on the day in question, be in existence and be within one of the categories listed in section 152 (a), which defines the term "dependent". However, a withholding exemption for a dependent who dies continues for the portion of the calendar year which occurs after the dependent's death, except that, in the case of an employee whose

taxable year is not a calendar year, the withholding exemption does not continue for a dependent, within the meaning of section 152 (a) (9) or (10), whose death occurs before the first day of the employee's taxable year beginning in the calendar year of death.

(2) The determination that an individual may or may not reasonably be expected to be a dependent shall be made for the taxable year of the employee in respect of which amounts deducted and withheld in the calendar year in which the day in question falls are allowed as a credit. In general, amounts deducted and withheld during any calendar year are allowed as a credit against the tax imposed by chapter 1 of the Code for the taxable year which begins in, or with, such calendar year. Thus, in order for an employee to be able to claim for a calendar year a withholding exemption with respect to a particular individual as a dependent there must be a reasonable expectation that the employee will be allowed an exemption with respect to such individual under section 151 (e) for his taxable year which begins in, or with, such calendar year.

(3) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day—

(i) Be an individual referred to in one of the numbered paragraphs in section 152 (a),

(ii) Reasonably be expected to receive over one-half of his support, within the meaning of section 152, from the employee in the calendar year, and

(iii) Either (*a*) reasonably be expected to receive less than $600 of gross income in the calendar year or (*b*) be a child (son, stepson, daughter, stepdaughter, adopted son, or adopted daughter) of the employee who (*1*) will not have attained the age of 19 at the close of the calendar year or (*2*) is a student as defined in section 151.

(4) An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is not a citizen of the United States, unless such individual (i) is at any time during the calendar year a resident of the United States, Canada, Mexico, the Canal Zone, or the Republic of Panama, or (ii) is a child of the employee born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, and the child is a resident of the Republic of the Philippines, and the employee was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.

§ 31.3402(f)(2) Statutory provisions; income tax collected at source; withholding exemptions; exemption certificates.

SEC. 3402. *Income tax collected at source.* * * *

(f) *Withholding exemptions*—* * *

(2) *Exemption certificates*—(A) *On commencement of employment.* On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) *Change of status.* If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) *Change of status which affects next calendar year.* If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary or his delegate may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

§ 31.3402(f)(2)–1 Withholding exemption certificates.

(a) *On commencement of employment.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled. For form and contents of such certificate, see § 31.3402 (f) (5)–1. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemptions.

(b) *Change in exemptions which affects calendar year.* (1) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he is entitled on such day. The number of withholding exemptions to which an employee is entitled decreases, for example, for any one of the following reasons:

(i) The employee's wife (or husband) for whom the employee has been claiming a withholding exemption (*a*) is divorced or legally separated from the employee, or (*b*) claims her (or his) own withholding exemption on a separate certificate.

(ii) In the case of an employee whose taxable year is not a calendar year, the employee's wife (or husband) for whom the employee has been claiming a withholding exemption dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year in which the spouse dies.

(iii) The employee finds that no exemption for his taxable year which begins in, or with, the current calendar year will be allowable to him under section 151 (e) in respect of an individual claimed as a dependent on the employee's withholding exemption certificate.

(2) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is more than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee may furnish the employer with a new withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(c) *Change in exemptions which affects next calendar year.* (1) If, on any day during the calendar year, the number of exemptions to which the employee will be, or may reasonably be expected to be, entitled under section 151 for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall be applicable:

(i) If such number is less than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee must, on or before December 1 of the year in which the change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the decrease in the number of withholding exemptions. If the change occurs in December, the new certificate must be furnished within 10 days after the change occurs. The number of exemptions to which an employee is entitled for his taxable year which begins in, or with, the next calendar year decreases, for example, for any of the following reasons:

(*a*) The spouse or a dependent of the employee dies.

(*b*) The employee finds that it is not reasonable to expect that an individual claimed as a dependent on the employee's withholding exemption certificate will qualify as a dependent of the employee for such taxable year.

(ii) If such number is greater than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee may, on or before December 1 of the year in which such change occurs, unless such change

occurs in December, furnish his employer with a new withholding exemption certificate reflecting the increase in the number of withholding exemptions. If the change occurs in December, the certificate may be furnished on or after the date on which the change occurs.

(2) Before December 1 of each year, every employer should request each of his employees to file a new withholding extemption certificate for the ensuing calendar year, in the event of change in the employee's exemption status since the filing of his latest certificate.

§ 31.3402(f)(3) Statutory provisions; income tax collected at source; withholding exemptions; when exemption certificate takes effect.

SEC. 3402. *Income tax collected at source.* * * *

(f) *Withholding exemptions*—* * *

(3) *When certificate takes effect*—(A) *First certificate furnished.* A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished,

(B) *Furnished to take place of existing certificate.* A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2) (C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term "status determination date" means January 1 and July 1 of each year.

§ 31.3402(f)(3)–1 When withholding exemption certificate takes effect.

(a) A withholding exemption certificate furnished the employer in any case in which no previous withholding exemption certificate is in effect with such employer, shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) A withholding exemption certificate furnished the employer in any case in which a previous withholding exemption certificate is in effect with such employer shall, except as hereinafter provided, take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished. However, at the election of the employer, except as hereinafter provided, such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished and before such status determination date.

(c) A withholding exemption certificate furnished the employer pursuant to section 3402 (f) (2) (C) (see paragraph (c) of § 31.3402 (f) (2)–1) which effects a change for the next calendar year, shall not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished.

(d) For purposes of this section the term "status determination date" means January 1 and July 1 of each year.

§ 31.3402(f)(4) Statutory provisions; income tax collected at source; withholding exemptions; period during which exemption certificate remains in effect.

SEC. 3402. *Income tax collected at source.* * * *

(f) *Withholding exemptions*—* * *

(4) *Period during which certificate remains in effect.* A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

§ 31.3402(f)(4)–1 Period during which withholding exemption certificate remains in effect.

A withholding exemption certificate which takes effect under section 3402(f) of the Internal Revenue Code of 1954, or which on December 31, 1954, was in effect under section 1622(h) of the Internal Revenue Code of 1939, shall continue in effect with respect to the employee until another withholding exemption certificate takes effect under section 3402 (f).

§ 31.3402(f)(5) Statutory provisions; income tax collected at source; withholding exemptions; form and contents of exemption certificate.

SEC. 3402. *Income tax collected at source.* * * *

(f) *Withholding exemptions*—* * *

(5) *Form and contents of certificate.* Withholding exemption certificates shall be in such form and contain such information as the Secretary or his delegate may by regulations prescribe.

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificate.

Form W–4 is the form prescribed for the withholding exemption certificate required to be filed under section 3402 (f) (2). See § 31.3402 (f) (2)–1. A withholding exemption certificate on Form W–4 shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Blank copies of Form W–4 will be supplied employers upon request to the district director. In lieu of the prescribed form of certificate, employers may prepare and use a form the provisions of which are identical with those of the prescribed form.

§ 31.3402(g) Statutory provisions; income tax collected at source; overlapping pay periods, and payment by agent or fiduciary.

SEC. 3402. *Income tax collected at source.* * * *

(g) *Overlapping pay periods, and payment by agent or fiduciary.* If a payment of wages is made to an employee by an employer—

(1) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) With respect to a period beginning in one and ending in another calendar year, or

(4) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary or his delegate under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

§ 31.3402(g)–1 Supplemental wage payments.

(a) *In general.* (1) An employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. When such supplemental wages are paid (whether or not at the same time as the regular wages) the amount of the tax required to be withheld under section 3402 (a) (the percentage method) or under section 3402 (c) (the wage bracket method) shall be determined in accordance with this paragraph or paragraph (b) of this section.

(2) The supplemental wages, if paid concurrently with wages for a payroll period, shall be aggregated with the wages paid for such payroll period. If not paid concurrently, the supplemental wages shall be aggregated with the wages paid or to be paid within the same calendar year for the last preceding payroll period or for the current payroll period. The amount of tax to be withheld shall be determined as if the aggregate of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

Example (1). A is employed as a salesman at a monthly salary of $100 plus commissions on sales made during the month. The number of withholding exemptions claimed is one. During January 1955 A earns $275 in commissions, which together with the salary of $100 is paid on February 10, 1955. Under the wage bracket method the amount of the tax required to be withheld is shown in the table applicable to a monthly payroll period. Under this table it will be found that the amount of tax required to be withheld is $57.00.

Example (2). B is employed at a salary of $3,000 per annum paid semimonthly on the 15th day and the last day of each month, plus a bonus and commission determined at the end of each 3-month period. The number of withholding exemptions claimed is four. The bonus and commission for the 3-month period ending on March 31, 1955, amount to $250, which is paid on April 10, 1955. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of $250 and the last preceding semimonthly wage payment of $125, or $375, is $46.60. Since tax in the amount of $2.70 was withheld on the semi-

monthly wage payment of $125, the amount to be withheld on April 10, 1955, is $48.90.

If, however, supplemental wages are paid and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld from supplemental wages by using the applicable rate under section 3402 (a) without allowance for exemption and without reference to any regular payment of wages.

(3) For provisions relating to the treatment of wages paid other than in cash to retail commission salesmen, see § 31.3402 (j)–1.

(b) *Special rule where aggregate withholding exemption exceeds wages paid.* (1) If supplemental wages are paid to an employee during a calendar year for a period which involves two or more consecutive payroll periods, for which other wages also are paid during such calendar year, and the aggregate of such other wages is less than the aggregate of the amounts determined under the table provided in section 3402 (b) (1) as the withholding exemptions applicable for such payroll periods, the amount of the tax required to be withheld on the supplemental wages shall be computed as follows:

Step 1. Determine an average wage for each of such payroll periods by dividing the sum of the supplemental wages and the wages paid for such payroll periods by the number of such payroll periods.

Step 2. Determine a tax for each payroll period as if the amount of the average wage constituted the wages paid for such payroll period.

Step 3. From the sum of the amounts of tax determined in Step 2 subtract the total amount of tax withheld, or to be withheld, from the wages, other than the supplemental wages, for such payroll periods. The remainder, if any, shall constitute the amount of the tax to be withheld upon the supplemental wages.

Example. An employee has a weekly payroll period ending on Saturday of each week, the wages for which are paid on Friday of the succeeding week. On the 10th day of each month he is paid a bonus based upon production during the payroll periods for which wages were paid in the preceding month. The employee is paid a weekly wage of $64 on each of the five Fridays occurring in April 1955. On May 10, 1955, the employee is paid a bonus of $125 based upon production during the five payroll periods covered by the wages paid in April. On the date of payment of the bonus, the employee, who is married and has three children, has a withholding exemption certificate in effect claiming five withholding exemptions. The amount of the tax to be withheld from the bonus paid on May 10, 1955, is computed as follows:

Wages paid in April 1955 for 5 payroll periods (5×$64)	$320.00
Bonus paid May 10, 1955	125.00
Aggregate of wages and bonus	445.00
Average wage per payroll period ($445÷5)	$89.00
Computation of tax under percentage method: Withholding exemptions (5×$13)	65.00
Remainder subject to tax	24.00
Tax on average wage for 1 week (18 percent of $24)	$4.32
Tax on average wage for 5 weeks	$21.60
Less: Tax previously withheld on weekly wage payments of $64	None
Tax to be withheld on supplemental wages	21.60
Computation of tax under wage bracket method:	
Tax on $89 wage under weekly wage table ($4.50 per week for 5 weeks)	$22.50
Less: Tax previously withheld on weekly wage payments of $64 ($0.20 per week for 5 weeks)	1.00
Tax to be withheld on supplemental wages	21.50

(2) The rules prescribed in this paragraph shall, at the election of the employer, be applied in lieu of the rules prescribed in paragraph (a) of this section except that this paragraph shall not be applicable in any case in which the payroll period of the employee is less than one week.

(c) *Vacation allowances.* Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the rules applicable with respect to supplemental wage payments shall apply to such vacation allowance.

§ 31.3402(g)–2 Wages paid for payroll period of more than one year.

If wages are paid to an employee for a payroll period of more than one year, for the purpose of determining the amount of tax required to be deducted and withheld in respect of such wages—

(a) Under the percentage method, the amount of the tax shall be determined as if such payroll period constituted an annual payroll period, and

(b) Under the wage bracket method, the amount of the tax shall be determined as if such payroll period constituted a miscellaneous payroll period of 365 days.

§ 31.3402(g)–3 Wages paid through an agent, fiduciary, or other person on behalf of two or more employers.

(a) If a payment of wages is made to an employee by an employer through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the amount of the tax required to be withheld on each wage payment made through such agent, fiduciary, or person shall, whether the wages are paid separately on behalf of each employer or paid in a lump sum on behalf of all such employers, be determined upon the aggregate amount of such wage payment or payments in the same manner as if such aggregate amount had been paid by one employer. Hence, under either the percentage method or the wage bracket method the tax shall be determined upon the aggregate amount of the wage payment.

(b) In any such case, each employer shall be liable for the return and payment of a pro rata portion of the tax so determined, such portion to be determined in the ratio which the amount contributed by the particular employer bears to the aggregate of such wages.

(c) For example, three companies maintain a central management agency which carries on the administrative work of the several companies. The central agency organization consists of a staff of clerks, bookkeepers, stenographers, etc., who are the common employees of the three companies. The expenses of the central agency, including wages paid to the foregoing employees, are borne by the several companies in certain agreed proportions. Company X pays 45 percent, Company Y pays 35 percent and Company Z pays 20 percent of such expenses. The amount of the tax required to be withheld on the wages paid to persons employed in the central agency should be determined in accordance with the provisions of this section. In such event, Company X is liable as an employer for the return and payment of 45 percent of the tax required to be withheld, Company Y is liable for the return and payment of 35 percent of the tax and Company Z is liable for the return and payment of 20 percent of the tax. (See § 31.3504–1, relating to acts to be performed by agents.)

§ 31.3402(h) Statutory provisions; income tax collected at source; withholding on basis of average wages.

SEC. 3402. *Income tax collected at source.*

* * *

(h) *Withholding on basis of average wages.* The Secretary or his delegate may, under regulations prescribed by him, authorize employers—

(1) To estimate the wages which will be paid to any employee in any quarter of the calendar year,

(2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

§ 31.3402(h)–1 Withholding on basis of average wages.

The Commissioner may authorize the employer to withhold the tax under section 3402 on the basis of the employee's average estimated wages, with necessary adjustments, for any quarter. Before using such method the employer must receive authorization from the Commissioner. Applications to use such method must be accompanied by evidence establishing the need for the use of such method.

§ 31.3402(i) Statutory provisions; income tax collected at source; additional withholding.

SEC. 3402. *Income tax collected at source.* * * *

(i) *Additional withholding.* The Secretary or his delegate is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in

such form as the Secretary or his delegate may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

§ 31.3402(i)–1 Additional withholding.

(a) In addition to the tax required to be deducted and withheld in accordance with the provisions of section 3402, the employer and employee may agree that an additional amount shall be withheld from the employee's wages. The agreement shall be in writing and shall be in such form as the employer may prescribe. The agreement shall be effective for such period as the employer and employee mutually agree upon. However, unless the agreement provides for an earlier termination, either the employer or the employee, by furnishing a written notice to the other, may terminate the agreement effective with respect to the first payment of wages made on or after the first "status determination date" (January 1 and July 1 of each year) which occurs at least 30 days after the date on which such notice is furnished.

(b) The amount deducted and withheld pursuant to an agreement between the employer and employee shall be considered as tax required to be deducted and withheld under section 3402. All provisions of law and regulations applicable with respect to the tax required to be deducted and withheld under section 3402 shall be applicable with respect to any amount deducted and withheld pursuant to the agreement.

§ 31.3402(j) Statutory provisions; income tax collected at source; noncash remuneration to retail commission salesman.

SEC. 3402 *Income tax collected at source.* * * *

(j) *Noncash remuneration to retail commission salesman.* In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter [chapter] with respect to such remuneration, provided that such employer files with the Secretary or his delegate such information with respect to such remuneration as the Secretary or his delegate may by regulation prescribe.

[Sec. 3402(j) as added by sec. 2(b), Act of Aug. 9, 1955 (Pub. Law 306, 84th Cong., 69 Stat. 605)]

§ 31.3402(j)–1 Remuneration other than in cash for service performed by retail commission salesman.

(a) *In general.* (1) An employer, in computing the amount to be deducted and withheld as tax in accordance with section 3402, may, at his election, disregard any wages paid, after August 9, 1955, in a medium other than cash for services performed for him by an employee if (i) the noncash remuneration is paid for services performed by the employee as a retail commission salesman and (ii) the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed by him as a retail commission salesman.

(2) Section 3402 (j) and this section are not applicable with respect to noncash wages paid to a retail commission salesman for services performed by him in a capacity other than as such a salesman. Such sections are not applicable with respect to noncash wages paid by an employer to an employee for services performed as a retail commission salesman if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesman, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the employee is measured by sales.

(b) *Retail commission salesman.* For purposes of section 3402 (j) and this section, the term "retail commission salesman" includes an employee who is engaged in the solicitation of orders at retail, that is, from the ultimate consumer, for merchandise or other products offered for sale by his employer. The term does not include an employee salesman engaged in the solicitation on behalf of his employer of orders from wholesalers, retailers, or others, for merchandise for resale. However, if the salesman solicits orders for more than one principal, he is not excluded from the term solely because he solicits orders from wholesalers or retailers on behalf of one or more principals. In such case the salesman may be a retail commission salesman with respect to services performed for one or more principals and not with respect to services performed for his other principals.

(c) *Noncash remuneration.* The term "noncash remuneration" includes remuneration paid in any medium other than cash, such as goods or commodities, stocks, bonds, or other forms of property. The term does not include checks or other monetary media of exchange.

(d) *Cross refcrence.* For provisions relating to records required to be kept and statements which must be furnished an employee with respect to wage payments, see sections 6001 and 6051 and the regulations thereunder in Subpart G of this part.

§ 31.3403 Statutory provisions; liability for tax.

SEC. 3403. *Liability for tax.* The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

§ 31.3403–1 Liability for tax.

Every employer required to deduct and withhold the tax under section 3402 from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee by the employer. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. See, however, § 31.3402 (d)–1. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid to the district director or deposited with a duly designated depositary of the United States.

§ 31.3404 Statutory provisions; return and payment by governmental employer.

SEC. 3404. *Return and payment by governmental employer.* If the employer is the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, Territory, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

§ 31.3404–1 Return and payment by governmental employer.

If the United States, or a State, Territory, Puerto Rico, or a political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, is an employer required to deduct and withhold tax under chapter 24, the return of the amount deducted and withheld as such tax may be made by the officer or employee having control of the payment of the wages or other officer or employee appropriately designated for that purpose. (For provisions relating to the execution and filing of returns, see Subpart G of the regulations in this part.)

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

§ 31.3501 Statutory provisions; collection and payment of taxes.

SEC. 3501. *Collection and payment of taxes.* The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections.

§ 31.3502 Statutory provisions; nondeductibility of taxes in computing taxable income.

SEC. 3502. *Nondeductibility of taxes in computing taxable income.* (a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

§ 31.3502–1 Nondeductibility of taxes in computing taxable income.

For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and of the tax deducted and withheld under chapter 24, see § 1.164–2 of this chapter (Income Tax Regulations). For provisions relating to the credit allowable to the recipient of the income in respect of the tax

deducted and withheld under chapter 24, see § 1.31–1 of this chapter (Income Tax Regulations).

§ 31.3503 Statutory provisions; erroneous payments.

SEC. 3503. *Erroneous payments.* Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

§ 31.3503–1 Tax under chapter 21 or 22 paid under wrong chapter.

If, for any period, an amount is paid as tax—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with § 31.6402(a)–2 and the applicable provisions of section 6402(a) and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 31.3504 Statutory provisions; acts to be performed by agents.

SEC. 3504. *Acts to be performed by agents.* In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

[Sec. 3504 as amended by sec. 71, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 31.3504–1 Acts to be performed by agents.

(a) *In general.* In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code of 1954, or compensation as defined in chapter 22 of such Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person, or if such fiduciary, agent, or other person has the control, receipt, custody, or disposal of such wages or compensation, the district director may, subject to such terms and conditions as he deems proper, authorize such fiduciary, agent, or other person to perform such acts as are required of such employer or employers under those provisions of the Internal Revenue Code of 1954 and the regulations thereunder which have application, for purposes of the taxes imposed by such chapter or chapters, in respect of such wages or compensation. If the fiduciary, agent, or other person is authorized by the district director to perform such acts, all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to employers in respect of such acts shall be applicable to such fiduciary, agent, or other person. However, each employer for whom such fiduciary, agent, or other person performs such acts shall remain subject to all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to an employer in respect of such acts. Any application for authorization to perform such acts, signed by such fiduciary, agent, or other person, shall be filed with the district director with whom the fiduciary, agent, or other person will, upon approval of such application, file returns in accordance with such authorization.

(b) *Prior authorizations continued.* An authorization in effect under section 1632 of the Internal Revenue Code of 1939 on December 31, 1954, continues in effect under section 3504 and is subject to the provisions of paragraph (a) of this section.

Subpart G—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

§ 31.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 31.6001–1 Records in general.

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person (including an employee) who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 31.6001–2 to 31.6001–5, inclusive, which relate to the claim.

(d) *Records of employees.* While not mandatory (except in the case of claims), it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by the regulations in this subpart to be kept by employers, and the statements furnished in accordance with the provisions of § 31.6051–1.

(e) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall maintain such records for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least four years after the date the claim is filed.

(f) *Cross reference.* See §§ 31.6001–2 to 31.6001–5, inclusive, for additional records required with respect to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, the Federal Unemployment Tax Act, and the collection of income tax at source on wages, respectively.

§ 31.6001–2 Additional records under Federal Insurance Contributions Act.

(a) *In general.* (1) Every employer liable for tax under the Federal Insurance Contributions Act shall keep records of all remuneration, whether in cash or in a medium other than cash, paid to his employees after 1954 for services (other than agricultural labor which constitutes or is deemed to constitute employment, domestic service in a private home of the employer, or service not in the course of the employer's trade or business) performed for him after 1936. Such records shall show with respect to each employee receiving such remuneration—

(i) The name, address, and account number of the employee and such additional information with respect to the employee as is required by paragraph

(c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(ii) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(iii) The amount of each such remuneration payment which constitutes wages subject to tax. See §§ 31.3121(a)–1 to 31.3121(a)(10)–1, inclusive.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) If the total remuneration payment (subdivision (ii) of this subparagraph) and the amount thereof which is taxable (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) Every employer shall keep records of the details of each adjustment or settlement of taxes under the Federal Insurance Contributions Act made pursuant to the regulations in this part. The employer shall keep as a part of his records a copy of each statement furnished pursuant to paragraph (c) of § 31.6011(a)–1.

(b) *Agricultural labor, domestic service, and service not in the course of employer's trade or business.* (1) Every employer who pays cash remuneration after 1954 for the performance for him after 1950 of agricultural labor which constitutes or is deemed to constitute employment, of domestic service in a private home of the employer not on a farm operated for profit, or of service not in the course of his trade or business shall keep records of all such cash remuneration with respect to which he incurs, or expects to incur, liability for the taxes imposed by the Federal Insurance Contributions Act, or with respect to which amounts equivalent to employee tax are deducted pursuant to section 3102(a). See §§ 31.3101–3, 31.3111–3, and 31.3121(a)–2 for provisions relating, respectively, to the liability for employee tax which is incurred when wages are received, the liability for employer tax which is incurred when wages are paid, and the time when wages are paid and received. Such records shall show with respect to each employee receiving such cash remuneration—

(i) The name of the employee.

(ii) The account number of each employee to whom wages for such services are paid within the meaning of § 31.3121(a)–2, and such additional information as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(iii) The amount of such cash remuneration paid to the employee (including any sum withheld therefrom as tax or for any other reason) for agricultural labor which constitutes or is deemed to constitute employment, for domestic service in a private home of the employer not on a farm operated for profit, or for service not in the course of the employer's trade or business; the calendar month in which such cash remuneration was paid; and the character of the services for which such cash remuneration was paid. When the employer incurs liability for the taxes imposed by the Federal Insurance Contributions Act with respect to any such cash remuneration which he did not previously expect would be subject to the taxes, the amount of any such cash remuneration not previously made a matter of record shall be determined by the employer to the best of his knowledge and belief.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such cash remuneration and the calendar month in which collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) To the extent material to a determination of tax liability, the number of days during each calendar year after 1956 on which agricultural labor which constitutes or is deemed to constitute employment is performed by the employee for cash remuneration computed on a time basis.

(2) Every person to whom a "crew leader", as that term is defined in section 3121(o), furnishes individuals for the performance of agricultural labor after December 31, 1958, shall keep records of the name; permanent mailing address, or if none, present address; and identification number, if any, of such "crew leader".

§ 31.6001–3 Additional records under Railroad Retirement Tax Act.

(a) *Records of employers.* (1) Every employer liable for tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money), other than tips, paid to his employees after 1954 for services rendered to him (including "time lost") after 1954. Such records shall show with respect to each employee—

(i) The name and address of the employee.

(ii) The total amount and date of each payment of remuneration to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(iii) The amount of such remuneration payment with respect to which the tax is imposed.

(iv) The amount of employee tax collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

(v) If the total payment of remuneration (subdivision (ii) of this subparagraph) and the amount thereof with respect to which the tax is imposed (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) The employer shall keep records of the details of each adjustment or settlement of taxes under the Railroad Retirement Tax Act made pursuant to the regulations in this part.

(b) *Records of employee representatives.* Every individual liable for employee representative tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money) paid to him after 1954 for services rendered (including "time lost") by him as an employee representative after 1954. Such records shall show—

(1) The name and address of each employee organization employing him.

(2) The total amount and date of each payment of remuneration for services rendered as an employee representative (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(3) The amount of such remuneration payment with respect to which the employee representative tax is imposed.

(4) If the total payment of remuneration (subparagraph (2) of this paragraph) and the amount thereof with respect to which the employee representative tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor.

§ 31.6001–4 Additional records under Federal Unemployment Tax Act.

(a) *Records of employers.* Every employer liable for tax under the Federal Unemployment Tax Act for any calendar year shall, with respect to each such year, keep such records as are necessary to establish—

(1) The total amount of remuneration (including any sum withheld therefrom as tax or for any other reason) paid to his employees during the calendar year for services performed after 1938.

(2) The amount of such remuneration which constitutes wages subject to the tax. See § 31.3306(b)–1 through § 31.3306(b)(8)–1.

(3) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (i) payments made and neither deducted nor to be deducted from the remuneration of his employees, and (ii) payments made and deducted or to be deducted from the remuneration of his employees.

(4) The information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

(5) If the total remuneration paid (subparagraph (1) of this paragraph) and the amount thereof which is subject to the tax (subparagraph (2) of this paragraph) are not equal, the reason therefor.

(6) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which each employee performed services not in the course of the employer's trade or business, and the amount of cash remunera-

tion paid at any time for such services performed within such quarter. See § 31.3306(c)(3)–1.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3306(b)(7)–1.

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see § 31.3306(c)–2 through § 31.3306(c)(17)–1 during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)–1) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

§ 31.6001–5 Additional records in connection with collection of income tax at source on wages.

(a) Every employer required under section 3402 to deduct and withhold income tax upon the wages of employees shall keep records of all remuneration paid to such employees. Such records shall show with respect to each employee—

(1) The name and address of the employee.

(2) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(3) The amount of such remuneration payment which constitutes wages subject to withholding.

(4) The amount of tax collected with respect to such remuneration payment, and, if collected at a time other than the time such payment was made, the date collected.

(5) If the total remuneration payment (subparagraph (2) of this paragraph) and the amount thereof which is taxable (subparagraph (3) of this paragraph) are not equal, the reason therefor.

(6) Copies of any statements furnished by the employee pursuant to paragraph (b)(12) of § 31.3401(a)–1 (relating to permanent residents of the Virgin Islands).

(7) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(7)–1 (relating to nonresident alien individuals who are residents of a contiguous country).

(8) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(A)–1 (relating to residence or physical presence in a foreign country).

(9) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(C)–1 (relating to citizens resident in Puerto Rico).

(10) The fair market value and date of each payment of noncash remuneration, made to an employee after August 9, 1955, for services performed as a retail commission salesman, with respect to which no income tax is withheld by reason of § 31.3402(j)–1.

(11) With respect to payments made in 1955 under a wage continuation plan (as defined in paragraph (a)(2)(i) of § 1.105–4 and §1.105–5 of this chapter (Income Tax Regulations)), the records required to be kept in respect of such payments are those prescribed under paragraph (b)(8)(i) of § 31.3401(a)–1.

(12) In the case of the employer for whom services are performed, with respect to payments made directly by him after December 31, 1955, under a wage continuation plan (as defined in paragraph (a)(2)(i) of § 1.105–4 and § 1.105–5 of this chapter (Income Tax Regulations))—

(i) The beginning and ending dates of each period of absence from work for which any such payment was made; and

(ii) Sufficient information to establish the amount and weekly rate of each such payment.

(13) The withholding exemption certificates (Form W–4) filed with the employer by the employee.

(14) The agreement, if any, between the employer and the employee for the withholding of additional amounts of tax pursuant to § 31.3402(i)–1.

(15) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which the employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. See § 31.3401(a)(4)–1.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3401(a)(11)–1.

(b) The employer shall keep records of the details of each adjustment or settlement of income tax withheld under section 3402 made pursuant to the regulations in this part.

§ 31.6001–6 Notice by district director requiring returns, statements, or the keeping of records.

The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for any of the taxes to which the regulations in this part have application.

§ 31.6011(a) Statutory provisions; general requirement of return, statement, or list; general rule.

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 31.6011(a)–5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended December 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the taxes imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in subparagraphs (3) and (4) of this paragraph, Form 941 is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by subparagraph (2) of this paragraph.

(2) *Employers of agricultural workers*—(i) *Quarterly returns for 1955.* Every employer who, at any time before October 1 of the calendar year 1955, incurs liability of $100 or more for the taxes imposed by the Federal Insurance Contributions Act with respect to wages paid in such year for agricultural labor shall make a return—

(*a*) For the first calendar quarter of such year if the liability for such taxes incurred in such quarter is $100 or more,

(*b*) For the period consisting of the first and second calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made only for the second calendar quarter if a return was required under (*a*) of this subdivision and if the liability for such taxes incurred in the second calendar quarter is $100 or more, and

(*c*) For the period consisting of the first, second, and third calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made (*1*) only for the period consisting of the second and third calendar quarters if a return was required under (*a*) of this subdivision but not under (*b*) of this subdivision, and if the total liability for such taxes incurred in the second and third calendar quarters totals $100 or more; or (2) only for the third calendar quarter if a return was required under (*b*) of this subdivision, and if the liability for such taxes incurred in the third calendar quarter is $100 or more.

Form 943A is the form prescribed for making the return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943A–PR if the Internal Revenue Service furnishes Form 943A–PR to the employer for use in lieu of Form 943A (see § 31.6091–1).

(ii) *Annual returns for 1955 and subsequent years.* Every employer who pays wages after 1954 for agricultural labor with respect to which taxes are imposed by the Federal Insurance Contributions Act shall make a return for the first calendar year in which he pays such wages and for each calendar year thereafter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 943 is the form prescribed for making the annual return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943PR if the Internal Revenue Service furnishes Form 943PR to the employer for use in lieu of Form 943 (see § 31.6091–1).

(3) *Employers of domestic workers.* Form 942 is the form prescribed for use by every employer in making a return as required under subparagraph (1) of this paragraph in respect of wages, as defined in the Federal Insurance Contributions Act, paid by him in any calendar quarter for domestic service in a private home of the employer not on a farm operated for profit. If, however, the employer is required under subparagraph (1) of this paragraph to make a return on Form 941 for such calendar quarter, such employer, at his election, may—

(i) Report all wages on Form 941, or

(ii) Report on Form 942 the wages for domestic service in a private home of the employer not on a farm operated for profit and omit such wages from the return on Form 941.

An employer entitled to make the election referred to in the preceding sentence who has chosen one method shall not change to the other method without first notifying the district director with whom he is required to file his returns that he will thereafter use such other method. See, however, § 31.6011(a)–6, relating to final returns on Form 941. The provisions of this subparagraph shall not apply to any employer required to file the return prescribed under subparagraph (1) of this paragraph with the office of the United States Internal Revenue Service in Puerto Rico (see § 31.6091–1).

(4) *Employers in Puerto Rico or the Virgin Islands.* Form 941PR is the form prescribed for use in making the return required under subparagraph (1) of this paragraph in the case of every employer who is required to file such return with the office of the United States Internal Revenue Service in Puerto Rico, except that the return shall be made on Form 941VI if the Internal Revenue Service furnishes Form 941VI to the employer for use in lieu of Form 941PR. However, Form 941 is the form prescribed for making such return in the case of every such employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

(b) *When to report wages.* Wages with respect to which taxes are imposed by the Federal Insurance Contributions Act shall be reported in the return of such taxes required under this section or § 31.6011(a)–5 for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period. However, if such wages are deemed to be paid in a later return period, they shall be reported only in the return for such later period. See § 31.3121(a)–2 relating to the time when wages are paid or deemed to be paid.

(c) *Correction of returns or schedules.* If in a return required under this section or § 31.6011(a)–5, or in any other manner, the employer fails to report, or incorrectly reports, to the district director, the name, account number, or wages of an employee, the employer shall furnish to the district director a written statement fully explaining the omission or error; except that such statement is not required by this paragraph if correction of the omission or error is made in connection with a supplemental return, adjustment, credit, refund, or abatement. The employer shall include in such statement his identification number (except that an identification number need not be included if the omission or error is with respect to information required to be reported on a return on Form 942), each return period for which the data were omitted or for which the incorrect data were furnished, the data incorrectly reported for each period, and the data which should have been reported. A copy of such statement shall be retained by the employer as a part of his records under § 31.6001–2. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

(d) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–2 Returns under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *Employers.* Every employer shall make a return for the first calendar quarter after 1954 within which compensation taxable under the Railfoad Retirement Tax Act is paid to his employee or employees for services rendered after 1954, and for each subsequent calendar quarter (whether or not taxable compensation is paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–1 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–1 shall be filed with the district director.

(2) *Employee representatives.* Every employee representative shall make a return for the first calendar quarter after 1954 within which he is paid taxable compensation for services rendered after 1954 as an employee representative, and for each subsequent calendar quarter (whether or not he is paid taxable compensation therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–2 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–2 shall be filed with the district director.

(b) *When to report compensation*—(1) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, compensation taxable under the Railroad Retirement Tax Act shall be reported in the return required under this section for the period in which it is deemed, under paragraph (d) of § 31.3231(e)–1 to be paid, unless under such section the compensation may be deemed to be paid in more than one return period, in which case it shall be reported only in the return for the first return period in which it is deemed to be paid.

(2) *Returns of employers required by State law to pay compensation on weekly basis*—(i) *In general.* If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all payroll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a)(1) of this section. This provision shall not apply, however, to any payroll week which falls in two calendar years. Any employer who elects to file a return as provided in this subparagraph shall notify the district director in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies. Any election so made shall be binding upon the employer with respect to all returns subsequently made by him until the district director authorizes or directs the employer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with paragraph (d) of § 31.3231(e)–1 and of determining the due date of a return in accordance with paragraph (b) of § 31.6071(a)–1, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

(ii) *Prior elections.* An election made by an employer, pursuant to the provisions of 26 CFR (1939) 410.501(b) (Regulations 100) or of 26 CFR (1939) 411.601 (b) (Regulations 114), which is in force and effect at the time the employer makes his first return under this section shall satisfy the requirements of subdivision (i) of this subparagraph with respect to the making of an election and shall be binding upon the employer with respect to all returns made by him under this section until the district director au-

thorizes or directs the employer to make a return on a different basis.

(iii) *Example.* Employer X is required by State law to pay his employees within 6 days after the compensation is earned. In compliance with the State law, employer X, for services rendered to him for the payroll week of June 27 to July 2, 1955, pays his employees on the last-named date. June 1955 is the last month of a period for which a return of tax is required by paragraph (a)(1) of this section. Employer X may elect to include in the return required by paragraph (a)(1) of this section for the period April 1 to June 30, 1955, the compensation paid to his employees for the payroll week of June 27 to July 2, 1955, inclusive, although the compensation for July 1 and 2 falls within another period for which a return is required by paragraph (a)(1) of this section. If, in this example, the payroll week ended on July 5, 1955, the compensation paid for the payroll week of June 29 to July 5 would be included in the return period in which July falls although the compensation earned for June 29 and 30 fell in a prior return period under the general rule.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–3 Returns under Federal Unemployment Tax Act.

(a) *Requirement.* Every person shall make a return of tax under the Federal Unemployment Tax Act for each calendar year with respect to which he is an employer as defined in § 31.3306(a)–1. Form 940 is the form prescribed for use in making the return.

(b) *When to report wages.* Wages taxable under the Federal Unemployment Tax Act shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–4 Returns of income tax withheld from wages.

(a) *In general.* Except as otherwise provided in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 1622 of the Internal Revenue Code of 1939 for the calendar quarter ended December 31, 1954, shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every person not required to make a return for the calendar quarter ended December 31, 1954, shall make a return of income tax withheld from wages pursuant to section 3402 for the first calendar quarter thereafter in which he is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 941 is the form prescribed for making the return required under this paragraph.

(b) *District director's copies of Form W–2.* (1) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall submit as part of such return the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. For the penalty provided in case of each failure to file Form W–2, see paragraph (a) of § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

(2) The copies of withholding statements for the current calendar year transmitted with the return required under paragraph (a) of this section shall be accompanied by an information statement on Form W–3. This subparagraph has no application to any return filed under this section in 1955.

(3) The copies of withholding statements for the current calendar year transmitted with the return shall be accompanied by a list (preferably in the form of an adding machine tape) of the amounts of income tax withheld shown on such statements. If an employer's total payroll is made up on the basis of a number of separate units or establishments, the statements may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary list or tape should be submitted, the total of which will agree with the corresponding entry to be made on Form W–3. If the number of statements is large, they may be forwarded in packages of convenient size. When this is done, the packages should be identified with the name of the employer and consecutively numbered, and Form W–3 should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on Form W–3. The return, Form 941, and remittance in cases of this kind should be submitted in the usual manner, accompanied by a brief statement that the district director's copies of Form W–2 and Form W–3 are in separate packages.

(4) The district director's copies of corrected Forms W–2 for a prior calendar year shall be submitted to the district director on or before the date fixed for filing the employer's return of income tax withheld from wages for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. Such copies of corrected Forms W–2 shall be accompanied by a statement explaining the corrections and, if submitted with the employer's return for such period ending December 31 or with such final return, shall be assembled separately from the district director's copies of Forms W–2 for the current calendar year (see subparagraph (1) of this paragraph).

(5) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–5 Monthly returns.

(a) *In general*—(1) *Requirement.* The provisions of this section are applicable in respect of the taxes reportable on Form 941, Form 941PR, or Form 941VI, pursuant to § 31.6011(a)–1 or § 31.6011 (a)–4. An employer who is required by § 31.6011(a)–1 or § 31.6011(a)–4 to make quarterly returns on any such form shall, in lieu of making such quarterly returns, make returns of such taxes in accordance with the provisions of this section if he is so notified in writing by the district director. The district director may so notify any employer (i) who, by reason of notification as provided in § 301.7512–1 of this chapter (Regulations on Procedure and Administration), is required to comply with the provisions of such § 301.7512–1, or (ii) who has failed to (*a*) make any such return on Form 941, Form 941PR, or Form 941VI, (*b*) pay tax reportable on any such form, or (*c*) deposit any such tax as required under the provisions of § 31.6302(c)–1. Every employer so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter (whether or not wages are paid in any such month) until he has filed a final return or is required to make quarterly returns pursuant to notification as provided in subparagraph (2) of this paragraph. However, if the notice provided for in this subparagraph is received after the close of the first calendar month of a calendar quarter, the first return under this section shall be made for the period beginning with the first day of such quarter and ending with the last day of the month in which the notice is received. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer under the provisions of § 31.6011 (a)–1 or § 31.6011(a)–4, except that, if some other form is furnished by the district director for use in lieu of such prescribed form, the return shall be made on such other form.

(2) *Termination of requirement.* The district director, in his discretion, may notify the employer in writing that he shall discontinue the filing of monthly returns under this section. If the employer is so notified, the last month for which a return shall be made under this section is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the employer shall make quarterly returns in accordance with the provisions of § 31.6011(a)–1 or § 31.6011(a)–4.

(b) *Information returns or statements*—(1) *Federal Insurance Contributions Act.* Every employer who is required under paragraph (a) of this section to make a return of tax under the Federal Insurance Contributions Act for any period within a calendar quarter

shall make an information return for such calendar quarter. Such return shall be made on Schedule A of Form 941, or the equivalent schedule of Form 941PR or Form 941VI, except that, if some other form or schedule is furnished by the district director for the purpose of making such return, the return shall be made on such other form or schedule. The information reported on such return shall include, with respect to each employee to whom the employer pays wages as defined in the Federal Insurance Contributions Act, the account number of the employee, the employee's name, the total amount of wages paid by the employer to the employee during the calendar quarter, and such other information as may be called for on the form provided for making such return.

(2) *Income tax withheld from wages.* (i) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall make an information statement for the calendar year which includes such period. Such information statement shall be made on Form W–3, except that, if some other form is furnished by the district director for use in lieu of Form W–3, the information statement shall be made on such other form. The information statement shall be accompanied by the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. The provisions of paragraph (b)(3) of § 31.6011(a)–4 shall be applicable in respect of such withholding statements. For provisions relating to the submission of the district director's copies of corrected Forms W–2 for a prior year, see paragraph (b)(4) of § 31.6011(a)–4. For the penalty provided in case of each failure to file Form W–2, see the provisions of paragraph (a) of § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

(ii) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, or such other form as may be furnished for use in lieu of Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages.* An employer who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages in respect of which he is required to make a return on such form, shall make such return for such period as a final return. Each return made as a final return shall be marked "Final return" by the person filing the return. Every such person filing a final return (other than a final return on Form 942 or Form 943) shall furnish information showing the date of the last payment of wages, as defined in section 3121(a) or section 3401(a). An employer (other than an employer making returns on Form 942) who has only temporarily ceased to pay wages, because of seasonal activities or for other reasons, shall not make a final return but shall continue to file returns. If (i) for any return period an employer makes a final return on a particular form, and (ii) after the close of such period the employer pays wages, as defined in section 3121(a) or section 3401(a), in respect of which the same or a different return form is prescribed, such employer shall make returns on the appropriate return form. For example, if an employer who has filed a final return on Form 941 pays wages only for domestic service in his private home not on a farm operated for profit, the employer is required to make returns on Form 942 in respect of such wages.

(2) *Railroad Retirement Tax Act*—(i) *Form CT–1.* An employer required to make returns on Form CT–1 who in any calendar quarter ceases to pay taxable compensation shall make the return on Form CT–1 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employer who has only temporarily ceased to pay taxable compensation shall continue to file returns on Form CT–1.

(ii) *Form CT–2.* An employee representative required to make returns on Form CT–2 who in any calendar quarter ceases to be paid taxable compensation for services as an employee representative shall make the return on Form CT–2 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employee representative who only temporarily ceases to be paid taxable compensation for services as an employee representative shall continue to file returns on Form CT–2.

(3) *Federal Unemployment Tax Act.* An employer required to make a return on Form 940 for a calendar year in which he ceases to be an employer, as defined in § 31.3306(a)–1, because of the discontinuance, sale, or other transfer of his business, shall make such return as a final return. Such return shall be marked "Final return" by the person filing the return.

(b) *Statement to accompany final return.* There shall be executed as a part of each final return, except in the case of a final return on Form 942, a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of an employer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took place. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. Such statement shall include any information required by this section as to the date of the last payment of wages or compensation. If the statement is executed as a part of a final return on Form CT–1 or Form CT–2, such statement shall be furnished in duplicate.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–7 Execution of returns.

(a) *In general.* Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the district director and if such return includes all taxes required to be reported by such person on such return for the period covered by the return. Only one return on any one prescribed form for a return period shall be filed by or for a taxpayer. Any supplemental return made on such form in accordance with § 31.6205–1 shall constitute a part of the return which it supplements. Consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation. For provisions relating to the filing of returns of the taxes imposed by the Federal Insurance Contributions Act and of income tax withheld under section 3402 in the case of governmental employers, see § 31.3122 and § 31.3404–1.

(b) *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be regularly furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed with the district director on or before the due date. See §§ 31.6071(a)–1 and 31.6091–1, relating, respectively, to the time and place for filing returns. In the absence of a prescribed return form, a statement made by a taxpayer disclosing the aggregate amount of wages or compensation reportable on such form for the period in respect of which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided

that without unnecessary delay such tentative return is supplemented by a return made on the proper form. For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

(c) *Signing and verification.* For provisions relating to the signing of returns, see § 31.6061–1. For provisions relating to the verifying of returns, see § 31.6065(a)–1.

§ 31.6011(b) Statutory provisions; identification of taxpayer.

SEC. 6011. *General requirement of return, statement, or list.* * * *

(b) *Identification of taxpayer.* The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

§ 31.6011(b)–1 Employers' identification numbers.

(a) *Requirement of application*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, every employer who on or after January 1, 1955, has in his employ one or more individuals in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application on Form SS–4 for an identification number. Each application, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Copies of Form SS–4 may be obtained from any district director, or any district office of the Social Security Administration. The application shall be filed with the district director with whom the employer will file returns of the taxes imposed by the Federal Insurance Contributions Act, or with the nearest district office of the Social Security Administration. Each application shall be signed by (i) the individual, if the employer is an individual; (ii) the president, vice president, or other principal officer, if the employer is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (iv) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the application required under this section.

(2) *Exception.* An employer, other than an employer who is required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico, who has in his employ only employees who are engaged exclusively in the performance of domestic service in his private home not on a farm operated for profit (see § 31.3121(a)(7)–1) is not required to apply for an identification number.

(3) *Time for filing Form SS–4.* The application for an identification number shall be filed on or before the seventh day after the date on which the first payment of wages, as defined in the Federal Insurance Contributions Act, is made by the employer. For provisions relating to the time when wages are paid, see § 31.3121(a)–2.

(b) *Employers who are assigned identification numbers without application.* An identification number will be assigned by a district director in the case of (1) an employer who is required to make returns of the taxes imposed by the Federal Insurance Contributions Act but who by reason of the provisions of paragraph (a)(2) of this section is not required to apply for an identification number, and (2) an employer who is required to make returns of income tax withheld from wages pursuant to section 3402 but who is not required to make returns of the taxes imposed by the Federal Insurance Contributions Act.

(c) *Crew leaders.* Any person who, as a crew leader within the meaning of section 3121(o), furnishes individuals to perform agricultural labor for another person shall, on or before the first date on which he furnishes such individuals to perform such labor for such other person, advise such other person of his name; permanent mailing address, or if none, present address; and identification number, if any.

(d) *Use of identification number.* The identification number assigned to an employer (other than a household employer referred to in paragraph (a)(2) of this section) shall be shown in the employer's records, returns, statements for employees, depositary receipts, and claims to the extent required by the applicable forms, regulations, and instructions.

§ 31.6011(b)–2 Employees' account numbers.

(a) *Requirement of application*—(1) *In general.* Every employee who on or after January 1, 1955, is in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an account number nor made application therefor, shall make an application on Form SS–5 for an account number. Each application shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employee shall file the application with any district office of the Social Security Administration or, if the employee is not working within the United States, with the district office of the Social Security Administration at Baltimore, Maryland. Copies of Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director. An account number will be assigned to the employee by the Social Security Administration in due course upon the basis of information reported on the application required under this section. A card showing the name and account number of an employee to whom an account number has been assigned will be furnished to the employee by the Social Security Administration.

(2) *Time for filing Form SS–5.* The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages, unless the employee leaves the employ of his employer before such seventh day, in which case the application shall be filed on or before the date on which the employee leaves the employ of his employer.

(3) *Changes and corrections.* Any employee may have his account number changed at any time by applying to a district office of the Social Security Administration and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS–5, should report such change or correction to a district office of the Social Security Administration. Copies of the form for making such reports may be obtained from any district office of the Administration.

(b) *Duties of employee with respect to his account number*—(1) *Information to be furnished to employer.* An employee shall, on the day on which he enters the employ of any employer for wages, comply with the provisions of subdivision (i), (ii), (iii), or (iv) of this subparagraph, except that, if the employee's services for the employer consist solely of agricultural labor, domestic service in a private home of the employer not on a farm operated for profit, or service not in the course of the employer's trade or business, the employee shall comply with such provisions on the first day on which wages are paid to him by such employer, within the meaning of § 31.3121(a)–2:

(i) *Employee who has account number card.* If the employee has been issued an account number card by the Social Security Administration and has the card available, the employee shall show it to the employer.

(ii) *Employee who has number but card not available.* If the employee does not have available the account number card issued to him by the Social Security Administration but knows what his account number is, and what his name is, exactly as shown on such card, the employee shall advise the employer of such number and name. Care must be exercised that the employer is correctly advised of such number and name.

(iii) *Employee who has receipt acknowledging application.* If the employee does not have an account number card but has available a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer.

(iv) *Employee who is unable to furnish number or receipt.* If an employee is unable to comply with the requirement of subdivision (i), (ii), or (iii) of this subparagraph, the employee shall furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full

name, mother's full name before marriage, and the employee's sex, including a statement as to whether the employee has previously filed an application on Form SS–5 and, if so, the date and place of such filing. The information required by this subdivision shall be furnished on Form SS–5, if a copy of Form SS–5 is available. The furnishing of such a Form SS–5 or other statement by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS–5 and file it with a district office of the Social Security Administration as required by paragraph (a) of this section. The foregoing provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. However, such employee shall advise the employer of his full name and present address.

For provisions relating to the duties of an employer when furnished the information required by subdivision (i), (ii), (iii), or (iv) of this subparagraph, see paragraph (c) of this section.

(2) *Additional information to be furnished by employee to employer.* Every employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of subparagraph (1) of this paragraph, has an account number card but for any reason does not show such card to the employer on such day shall promptly thereafter show the card to the employer. An employee who does not have an account number card on such day shall, upon receipt of an account number card from the Social Security Administration, promptly show such card to the employer, if he is still in the employ of that employer. If the employee has left the employ of the employer when the employee receives an account number card from the Social Security Administration, he shall promptly advise the employer of his account number and name exactly as shown on such card. The account number originally assigned to an employee (or the number as changed in accordance with paragraph (a)(3) of this section) shall be used by the employee as required by this paragraph even though he enters the employ of other employers.

(c) *Duties of employer with respect to employees' account numbers*—(1) *Employee who shows account number.* Upon being shown the account number card issued to an employee by the Social Security Administration, the employer shall enter the account number and name, exactly as shown on the card, in the employer's records, returns, statements for employees, and claims to the extent required by the applicable forms, regulations, and instructions.

(2) *Employee who does not show account number card.* With respect to an employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of paragraph (b)(1) of this section, does not show the employer an account number card issued to the employee by the Social Security Administration, the employer shall request such employee to show him such card. If the card is not shown, the employer shall comply with the applicable provisions of subdivision (i), (ii), (iii), (iv), or (v) of this subparagraph:

(i) *Employee who has not applied for account number.* If the employee has not been assigned an account number and has not made application therefor with a district office of the Social Security Administration, the employer shall inform the employee of his duties under this section.

(ii) *Employee who has account number.* If the employee advises the employer of his number and name as shown on his account number card, as provided in paragraph (b)(1)(ii) of this section, the employer shall enter such number and name in his records.

(iii) *Employee who has receipt for application.* If the employee shows the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office. The receipt shall be retained by the employee.

(iv) *Employee who furnishes Form SS–5 or statement.* If the employee furnishes information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall retain such information for use as provided in subparagraph (3)(ii) of this paragraph.

(v) *Household or agricultural employees.* If the employee advises the employer of his full name and present address in accordance with those provisions of paragraph (b)(1)(iv) of this section which are applicable in the case of employees engaged exclusively in the performance of domestic service in a private home of the employer not on a farm operated for profit, or agricultural labor, the employer shall enter such name and address in his records.

(3) *Account number unknown when return is filed.* In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return is filed for any return period with respect to which the employer is required to report the wages paid to such employee—

(i) *If employee has shown receipt for application.* If the employee has shown to the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office.

(ii) *If employee furnished Form SS–5 or statement.* If the employee has furnished information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall prepare a copy of the Form SS–5 or statement furnished by the employee and attach the copy to the return.

(iii) *If employee did not furnish receipt, Form SS–5, or statement.* If neither subdivision (i) nor (ii) of this subparagraph is applicable, the employer shall, except as provided in subparagraph (4) of this paragraph, attach to the return a Form SS–5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS–5 or statement an explanation of why he has not secured from the employee the information referred to in paragraph (b)(1)(iv) of this section, and shall insert the word "Employer" as part of his signature.

(4) *Household or agricultural employees.* The provisions of subparagraph (3)(iii) of this paragraph are not applicable with respect to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. If any such employee has not furnished to the employer the information required by paragraph (b)(1)(i), (ii), or (iii) of this section prior to the time the employer's return is filed for any return period with respect to which the employer is required to report wages paid to such employee, the employer shall enter the word "Unknown" in the account number column of the return and (i) file with the return a statement showing the employee's full name and present or last known address, or (ii) enter such address on the return form immediately below the name of the employee.

(5) *Where to obtain Form SS–5.* Employers may obtain copies of Form SS–5 from any district office of the Social Security Administration or from any district director.

(6) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number of the requirements of paragraphs (a) and (b) of this section.

§ 31.6051 Statutory provisions; receipts for employees.

SEC. 6051. *Receipts for employees*—(a) *Requirement.* Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) The name of such person,

(2) The name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) The total amount of wages as defined in section 3401(a),

(4) The total amount deducted and withheld as tax under section 3402,

(5) The total amount of wages as defined in section 3121(a), and

(6) The total amount deducted and withheld as tax under section 3101.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2).

(b) *Special rule as to compensation of members of Armed Forces.* In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe.

(d) *Statements to constitute information returns.* A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879)]

§ 31.6051–1 Statements for employees.

(a) *Requirement if wages are subject to withholding of income tax*—(1) *General rule.* (i) Every employer, as defined in section 3401(d), required to deduct and withhold from an employee a tax under section 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee, in respect of the remuneration paid by such employer to such employee during the calendar year, the tax return copy and the employee's copy of a statement on Form W–2. For example, if the wage bracket method of withholding provided in section 3402(c)(1) is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period are equal to or in excess of the smallest wage from which tax must be withheld in the case of an employee claiming one exemption. If the percentage method is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 3402(b)(1). Each statement on Form W–2 shall show the following:

(*a*) The name, address, and identification number of the employer,

(*b*) The name and address of the employee, and, if wages as defined in section 3121(a) have been paid, his social security account number,

(*c*) The total amount of wages as defined in section 3401(a),

(*d*) The total amount deducted and withheld as tax under section 3402,

(*e*) The total amount of wages as defined in section 3121(a), and

(*f*) The total amount of employee tax under section 3101 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this subparagraph.

(ii) Payments made in 1955 under a wage continuation plan shall be reported on Form W–2 to the extent, and in the manner, provided in paragraph (b)(8)(i) of § 31.3401(a)–1.

(iii) In the case of statements furnished by the employer for whom services are performed, with respect to wages paid after December 31, 1955, "the total amount of wages as defined in section 3401(a)", as used in section 6051(a)(3), shall include all payments made directly by such employer under a wage continuation plan which constitute wages in accordance with paragraph (b)(8)(ii)(*a*) of § 31.3401(a)–1, without regard to whether tax has been withheld on such amounts.

(iv) Form W–2 is not required in respect of any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401(d)(1). See paragraph (b)(8) of § 31.3401(a)–1.

(v) In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a)(2) and (5), shall be determined in accordance with section 3121(i)(2) and section 3122.

(2) *Statements for members of the Armed Forces of the United States.* Section 6051(b) contains certain special provisions which are applicable in the case of members of the Armed Forces of the United States in active service. In such case, Form W–2 shall be furnished to each such member of the Armed Forces if any tax has been withheld under section 3402 during the calendar year from the remuneration of such member or if any of the remuneration paid during the calendar year for such active service is includible under chapter 1 of the Code in the gross income of such member. Form W–2, in the case of such member, shall show, as "the total amount of wages as defined in section 3401(a)", as used in section 6051(a)(3), the amount of the remuneration paid during the calendar year which is not excluded under chapter 1 from the gross income of such member, whether or not such remuneration constitutes wages as defined in section 3401(a) and whether or not paid for such active service.

(3) *Undelivered Forms W–2.* The tax return copy and the employee's copy of each withholding statement on Form W–2 for the calendar year which the employer is required to furnish to the employee and which after reasonable effort he is unable to deliver to the employee shall be transmitted to the district director with the return on Form 941 filed by the employer for the return period ending June 30 in the next succeeding calendar year or with the employer's final return if filed for a period ending on an earlier date. Thus, the undelivered copies of Forms W–2 ordinarily will be transmitted to the district director on or before July 31 or August 10 of the year following that for which they were issued, depending upon when the return for such return period is required to be filed. In the case of an employer having branch offices, the undelivered copies of Forms W–2 held in such branch offices may be transmitted by the employer with such return or, at the option of the employer, may be transmitted by the branch office directly to the district director for the internal revenue district in which the branch office is located. Such direct transmittal by branch offices shall be made at the time prescribed for the filing of the employer's return for the return period ending June 30 in the calendar year following that for which the Forms W–2 were issued or at the time of the filing of the employer's final return if filed for a period ending on an earlier date. The provisions of this subparagraph are also applicable with respect to any undelivered corrected statements issued for a prior calendar year.

(b) *Requirement if wages are not subject to withholding of income tax*—(1) *General rule.* If during the calendar year an employer pays to an employee wages subject to the employee tax imposed by section 3101, and the employer is not required by paragraph (a) of this section to furnish to such employee a statement on Form W–2 for such calendar year, the employer shall, in accordance with the provisions of this paragraph, furnish a written statement to

the employee with respect to such wages. Such statement shall be in a form suitable for retention by the employee and shall show, with respect to the wages paid by the employer to the employee during the calendar year for employment after 1936, the following:

(i) The name and address of the employer,

(ii) The name, address, and social security account number of the employee,

(iii) The total amount of wages as defined in section 3121(a), and

(iv) The total amount of employee tax deducted and withheld from such wages (increased by any adjustment in such year for overcollection, or decreased by any adjustment in such year for undercollection, of employee tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this paragraph.

(2) *Uniformed services.* In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a)(5), shall be determined in accordance with section 3121(i)(2) and section 3122.

(3) *Form of statement.* No particular form is prescribed for the statement required by this paragraph. For the convenience of employers in complying with the requirements of this paragraph, copies of a form of statement, Form SS–14, will be furnished by district directors upon request.

(c) *Correction of statements*—(1) *Federal Insurance Contributions Act.* If (i) the amount of employee tax under section 3101 deducted and withheld in the calendar year from the wages, as defined in section 3121(a), paid during such year was less or greater than the tax imposed by section 3101 on such wages by reason of the adjustment in such year of an overcollection or undercollection of the tax in any prior year, or (ii) regardless of the reason for the error or the method of its correction, the amount of wages as defined in section 3121(a), or tax under section 3101, entered on a statement furnished pursuant to this section to an employee for a prior year was incorrect, a corrected statement for such prior year reflecting the adjustment or the correct data shall be furnished to the employee. Such statement shall be marked "Corrected by Employer".

(2) *Income tax withholding.* A corrected statement on Form W–2 shall be furnished to the employee with respect to a prior calendar year (i) to show the correct amount of wages, as defined in section 3401(a), paid during the prior calendar year if the amount of such wages entered on a statement furnished to the employee for such prior year is incorrect, or (ii) to show the amount actually deducted and withheld as tax under section 3402 if such amount is less or greater than the amount entered as tax withheld on the statement furnished the employee for such prior year. Such statement shall be marked "Corrected by Employer".

(3) *Cross reference.* For provisions relating to the disposition of the district director's copy of a corrected Form W–2, see paragraph (b)(4) of § 31.6011(a)–4.

(d) *Time for furnishing statements*—(1) *In general.* Each statement required by this section for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made. For provisions relating to the filing of the district director's copies of Form W–2, see paragraph (b) of § 31.6011(a)–4.

(2) *Extensions of time.* (i) For good cause shown upon written application by an employer, the district director may grant an extension of time not exceeding 30 days in which to furnish to employees the statements required by this section. Each application for an extension of time under this subdivision shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer files his returns; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section. In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the district director's copies of Form W–2, see paragraph (a)(3) of § 31.6081(a)–1.

(ii) An extension of time, not exceeding 30 days, within which to furnish any statement required by this section upon termination of employment is hereby granted to any employer with respect to any employee whose employment is terminated during the calendar year. In the case of intermittent or interrupted employment where there is reasonable expectation on the part of both employer and employee of further employment, there is no requirement that a written statement be immediately furnished the employee; but when such expectation ceases to exist, the statement must be furnished within 30 days from that time.

(3) *Cross references.* For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see § 31.6674–1 and section 7204.

§ 31.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* * * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 31.6061–1 Signing of returns.

Each return required under the regulations in this subpart shall, if signature is called for by the form or instructions relating to the return, be signed by (a) the individual, if the person required to make the return is an individual; (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization; or (d) the fiduciary, if the person required to make the return is a trust or estate. The return may be signed for the taxpayer by an agent who is duly authorized in accordance with § 31.6011(a)–7 to make such return.

§ 31.6065(a) Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§ 31.6065(a)–1 Verification of returns or other documents.

If a return, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, statement, or other document shall be so verified by the person signing it.

§ 31.6071(a) Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages*—(1) *Quarterly or annual returns.* Each return required to be made under § 31.6011(a)–1, in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)–4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, any such return may be filed on or before the tenth

day of the second calendar month following such period if such return is accompanied by depositary receipts, Form 450, showing timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of the deposit for any month will be determined by the earliest date stamped on the validated Form 450 by an authorized commercial bank or by a Federal Reserve bank.

(2) *Monthly tax returns.* Each return in respect of the taxes imposed by the Federal Insurance Contributions Act or of income tax withheld which is required to be made under paragraph (a) of § 31.6011(a)–5 shall be filed on or before the fifteenth day of the first calendar month following the period for which it is made.

(3) *Information returns or statements*—(i) *Federal Insurance Contributions Act.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act which is required to be made under paragraph (b)(1) of § 31.6011(a)–5 shall be filed on or before the fifteenth day following the calendar quarter for which it is made, except that, if a tax return under paragraph (a) of § 31.6011(a)–5 is made as a final return for a period ending prior to the last day of a calendar quarter, the information return shall be filed on or before the fifteenth day of the first calendar month following the period for which the tax return is filed.

(ii) *Income tax withheld from wages.* Each information statement in respect of income tax withheld from wages which is required to be made under paragraph (b)(2) of § 31.6011(a)–5 shall be filed on or before January 31 following the calendar year for which it is made, except that, if a tax return under paragraph (a) of § 31.6011(a)–5 is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the first calendar month following the period for which the tax return is filed.

(b) *Railroad Retirement Tax Act.* Each return of the taxes imposed by the Railroad Retirement Tax Act required to be made under § 31.6011(a)–2 shall be filed on or before the last day of the second calendar month following the period for which it is made.

(c) *Federal Unemployment Tax Act.* Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under § 31.6011(a)–3 shall be filed on or before the last day of the first calendar month following the period for which it is made.

(d) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(e) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

(f) *Cross reference.* For extensions of time for filing returns and other documents, see § 31.6081(a)–1.

§ 31.6081(a) Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) *Federal Insurance Contributions Act; income tax withheld from wages; and Railroad Retirement Tax Act*—(1) *In general.* Except as otherwise provided in subparagraphs (2) and (3) of this paragraph, no extension of time for filing any return or other document required in respect of the Federal Insurance Contributions Act, income tax withheld from wages, or the Railroad Retirement Tax Act will be granted.

(2) *Information returns of employers required to file monthly returns of tax under the Federal Insurance Contributions Act.* The district director may, upon application of the employer, grant an extension of time in which to file any information return required under paragraph (b)(1) of § 31.6011(a)–5. Such extension of time shall not extend beyond the last day of the calendar month in which occurs the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return. Each application for an extension of time for filing an information return shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return.

(3) *Information statements of employers required to file returns of income tax withheld from wages.* For good cause shown upon application by an employer, the district director may grant an extension of time not exceeding 30 days in which to file (i) the district director's copies of Form W–2 pursuant to paragraph (b)(1) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, and (ii) Form W–3 pursuant to paragraph (b)(2) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, or such other form as may be furnished pursuant to paragraph (b)(2) of § 31.6011(a)–5 for use in lieu of Form W–3. Each application for an extension of time under this subparagraph shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the date on which the employer is required to file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, without regard to this subparagraph.

(b) *Federal Unemployment Tax Act.* The district director may, upon application of the employer, grant a reasonable extension of time (not to exceed 90 days) in which to file any return required in respect of the Federal Unemployment Tax Act. Any application for an extension of time for filing the return shall be in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (c) of § 31.6071(a)–1 for filing the return, or on or before the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part thereof.

(c) *Duly authorized agent.* In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth the reasons for a signature other than the employer's and the relationship existing between the employer and the signer.

§ 31.6091 Statutory provisions; place for filing returns.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

* * * * *

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2) * * * of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 31.6091–1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Return of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C., unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Revenue Service Representative, United States Internal Revenue Service, Santurce, Puerto Rico.

(d) *Exceptional cases*—(1) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this subpart in any internal revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

(2) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file any return required of him under the regulations in this subpart in any internal revenue district selected by the Commissioner, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

§ 31.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

§ 31.6101–1 Period covered by returns.

The period covered by any return required under the regulations in this subpart shall be as provided in those provisions of the regulations under which the return is required to be made. See § 31.6011(a)–1, relating to returns of taxes under the Federal Insurance Contributions Act; § 31.6011(a)–2, relating to returns of taxes under the Railroad Retirement Tax Act; § 31.6011(a)–3, relating to returns of tax under the Federal Unemployment Tax Act; § 31.6011(a)–4, relating to returns of income tax withheld under section 3402; and § 31.6011(a)–5, relating to monthly returns of taxes under the Federal Insurance Contributions Act and of income tax withheld under section 3402.

§ 31.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions.* * * *

(2) *Use of Government depositaries.* For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 31.6151–1 Time for paying tax.

(a) *In general.* The tax required to be reported on each tax return required under this subpart is due and payable to the district director at the time prescribed in § 31.6071(a)–1 for filing such return. See the applicable sections of 26 CFR Part 301 (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties.

(b) *Use of Government depositaries.* For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see §§ 31.6302(c)–1 and 31.6302(c)–2.

§ 31.6161(a)(1) Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

§ 31.6161(a)(1)–1 Extensions of time for paying tax.

No extension of time will be granted for payment of any of the taxes to which the regulations in this part have application.

§ 31.6205 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6205–1 Adjustments of underpayments.

(a) *In general.* (1) An employer who makes, or has made, an undercollection or underpayment of—

(i) Employee tax under section 3101, employer tax under section 3111, or the employee or employer tax under corresponding provisions of prior law,

(ii) Employee tax under section 3201, employer tax under section 3221, or the employee or employer tax under corresponding provisions of prior law, or

(iii) Income tax required under section 3402 to be withheld,

with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction shall constitute an adjustment without interest to the extent provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the return form which is prescribed for use, at the time

the correction is made, in reporting tax which corresponds to the tax underpaid.

(3) Every return or supplemental return on which an underpayment is corrected pursuant to this section must have securely attached as a part thereof a statement explaining the correction, designating the return period in which the error was ascertained and the return period to which the error relates, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) If a correction is made under this section with respect to the erroneous reporting on a return, or omission from a return, under the Federal Insurance Contributions Act, as in effect prior to or on and after January 1, 1955, of an amount of wages required to be shown on the return as a separate item in respect of a particular employee, the statement referred to in subparagraph (3) of this paragraph shall include the following information:

(i) The name and account number of each employee whose wages were erroneously reported or omitted from such return,

(ii) The period for which such wages were required to be reported on such return,

(iii) The amount, if any, of wages actually reported on such return for each such employee, and

(iv) The amount of wages which should have been reported on such return for each such employee.

No particular form is prescribed for furnishing the information required by this subparagraph, but if printed forms are desired, the district director will supply Form 941c or Form 941c PR, whichever is appropriate, upon request.

(6) No underpayment shall be reported pursuant to this section after receipt from the district director of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand.

(7) For provisions relating to correction of erroneous statements furnished to employees in respect of wages subject to withholding of income tax under section 3402, and of wages under the Federal Insurance Contributions Act, see paragraph (c) of § 31.6051–1.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Undercollection ascertained before return is filed.* If no employee tax or less than the correct amount of employee tax is deducted from any payment to an employee of wages, as defined in the Federal Insurance Contributions Act, or compensation as defined in the Railroad Retirement Tax Act, and the error is ascertained before the filing of the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on such return and pay to the district director the correct amount of such employee tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to any payment to an employee of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, is reported on such return and paid to the district director, the employer shall adjust the underpayment (*a*) by reporting the additional amount due by reason of the underpayment as an adjustment on a return filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained, or (*b*) by reporting such additional amount on a supplemental return for the return period in which such payment of wages or compensation is made. The reporting of such underpayment on a supplemental return constitutes an adjustment within the meaning of this section only when the supplemental return is filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. The amount of each underpayment adjusted in accordance with this subdivision shall be paid to the district director, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subdivision, but the amount thereof is not paid when due, interest thereafter accrues (see section 6601).

(ii) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to a payment to an employee of wages or compensation is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (*a*) reported on the employer's next return, or (*b*) reported immediately on a supplemental return. For interest accruing on amounts so reported, see section 6601 and corresponding provisions of prior law.

(3) *Deductions from employees.* If an employer collects no employee tax or less than the correct amount of employee tax from an employee with respect to a payment of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The amount of an undercollection of employee tax from an employee shall be reported and paid, as provided in subparagraph (1) or (2) of this paragraph, whether or not the undercollection is corrected by a deduction made as prescribed in the foregoing provisions of this subparagraph. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If any employer makes an erroneous collection of employee tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee.

(c) *Income tax required to be withheld from wages*—(1) *Undercollection ascertained before return is filed.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in any return period, and if the error is ascertained before the return is filed for the period in which such wages are paid, the employer shall nevertheless report on such return the correct amount of the tax required to be withheld. However, the reporting and payment by an employer of tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period, is reported on a return and paid to the district director, the employer shall (*a*) report the additional amount due by reason of the underpayment on a return for any return period in the calendar year in which the wages were paid, or (*b*) report such additional amount on a supplemental return for the return period in which such wages were paid. Such reporting constitutes an adjustment within the meaning of this section only if the return or supplemental return on which the underpayment is reported is filed on or before the last day on which the return is required to be filed for the return period in which the error was ascertained.

(ii) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (*a*) reported on the employer's next return, if such next return is for any return period in the calendar year in which the wages were paid, or (*b*) reported immediately on a supplemental return.

(3) *Payment of amounts reported as undercollections or underpayments.* (i) For provisions relating to the employer's liability for an underpayment of tax

unless he can show that the income tax against which the tax under section 3402 may be credited has been paid, see § 31.3402(d)–1.

(ii) Except as provided in § 31.3402 (d)–1, any amount reported as an adjustment within the meaning of this paragraph shall be paid to the district director, without interest, at the time fixed for reporting the adjustment.

(iii) For interest accruing on amounts which are not paid when due, see section 6601.

(4) *Deductions from employee.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in a calendar year, the employer shall collect the amount of the undercollection on or before the last day of such year by deducting such amount from remuneration of the employee, if any, under his control. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. Any undercollection in a calendar year not corrected by a deduction made pursuant to the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer within such calendar year. For provisions relating to the employer's liability for the tax, whether or not he collects it from the employee, see § 31.3403–1.

§ 31.6302(b) Statutory provisions; mode or time of collection; discretionary method.

SEC. 6302. *Mode or time of collection.* • • •

(b) *Discretionary method.* Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501(a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

[Sec. 6302(b) as amended by sec. 206(b), Highway Revenue Act 1956 (70 Stat. 391)]

§ 31.6302(b)–1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by chapter 21 (Federal Insurance Contributions Act), see §§ 31.6011(a)–1 and 31.6011(a)–5.

§ 31.6302(c) Statutory provisions; mode or time of collection; use of Government depositaries.

SEC. 6302. *Mode or time of collection.* • • •

(c) *Use of Government depositaries.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 31.6302(c)–1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (b) of this section, if during any calendar month, other than the last month of a calendar quarter, the aggregate amount of—

(i) The employee tax withheld under section 3102,

(ii) The employer tax for such month under section 3111, and

(iii) The income tax withheld under section 3402,

exclusive of taxes with respect to wages for agricultural labor or for domestic service in a private home of the employer, exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(2) *Employers of agricultural workers*—(i) *Requirement for 1955.* If during any calendar month, other than the last month of a calendar quarter, in 1955 the aggregate amount of—

(*a*) The employee tax withheld under section 3102 with respect to wages for agricultural labor, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(ii) *Requirement for 1956 and subsequent years.* Except as provided in paragraph (b) of this section, if during any calendar month other than December, in any calendar year after 1955, the aggregate amount of—

(*a*) The employee tax withheld under section 3102 during such month with respect to wages for agricultural labor, plus any such employee tax which was previously withheld in the same calendar year with respect to such wages but which was neither deposited nor required to be deposited on or before the last day of such month, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor, plus any such employer tax, which was neither deposited nor required to be deposited on or before the last day of such month, for any prior month of the same calendar year with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(3) *Depositary receipts.* Any deposit required to be made by an employer under subparagraph (1) of this paragraph shall be made separately from any deposit required to be made by him under subparagraph (2) of this paragraph. However, an employer required to make deposits under subparagraph (1) or subparagraph (2) may make one, or more than one, remittance of the amount required by such subparagraph to be deposited for a calendar month. Each such remittance shall be accompanied by a Federal Depositary Receipt (Form 450) which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the district director the balance, if any, of the taxes due for such period. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires. If a deposit is made for the last month of a return period, the employer shall make it in ample time (whether before, on, or after the fifteenth day of the succeeding month) to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return.

(4) *Procurement of prescribed forms.* Initially, Form 450, Federal Depositary Receipt, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in this paragraph. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The employer's identification number and name, as entered on each depositary receipt, shall be the same as they are required to be shown on the return to be filed with the district director. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(b) *Monthly returns.* The provisions of this section are not applicable with respect to taxes for the month in which the employer receives notice from the district director that returns are required under § 31.6011(a)–5, or for any subsequent month for which such a return is required.

§ 31.6302(c)–2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

(a) *Requirement.* If during any calendar month the aggregate amount of—

(1) The employee tax withheld under section 3202 or under corresponding provisions of prior law, and

(2) The employer tax for such month under section 3221 or under corresponding provisions of prior law,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank, except that the deposit for the last month of a return period shall be made on or before the last day of the first month following such period. If a portion of the taxes for a calendar month is reportable under § 31.6011(a)–2 on the return on Form CT–1 for the return period immediately preceding such month, the employer is required to deposit such portion in the same manner as if it were for the last calendar month in such return period.

(b) *Depositary receipts.* The employer may make one, or more than one, remittance of the amounts required by paragraph (a) of this section to be deposited for a calendar month. Each such remittance shall be accompanied by a Railroad Retirement Depositary Receipt (Form 515), which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated and shall pay to the district director the balance, if any, of the taxes due for such period. If the aggregate amount of the taxes deposited, as shown on the depositary receipt or receipts attached to such return, is in excess of the taxes shown on such return, a credit or refund may be obtained; and in the event the excess is applied as a credit against taxes reported by the employer on a return on Form CT–1 for a subsequent return period, the employer shall reduce the amount of the deposit otherwise required under paragraph (a) of this section for one of the months of such subsequent return period by the amount of such credit.

(c) *Procurement of prescribed form.* Initially, Form 515, Railroad Retirement Depositary Receipt, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in paragraph (a) of this section. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of the identification number to be shown on his depositary receipts. The identification number, as entered on each depositary receipt, shall be the same as the identification number assigned to the employer pursuant to § 31.6011(b)–1. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

§ 31.6302(c)–3 Cross references.

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see the provisions of § 301.6656–1 of this chapter (Regulations on Procedure and Administration).

(b) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

§ 31.6402(a) Statutory provisions; authority to make credits or refunds.

SEC. 6402. *Authority to make credits or refunds*—(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

§ 31.6402(a)–1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)–2, 31.6402(a)–3, and 31.6414–1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402–1 and 301.6402–2 of this chapter (Regulations on Procedure and Administration). For provisions relating to credits of employment taxes which constitute adjustments without interest, see §§ 31.6413(a)–1 and 31.6413(a)–2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to district director*—(1) *In general.* Any person who pays to the district director more than the correct amount of—

(i) Employee tax under section 3101, or employer tax under section 3111, of the Federal Insurance Contributions Act,

(ii) Employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221, of the Railroad Retirement Tax Act,

(iii) Any such tax under a corresponding provision of prior law, or

(iv) Interest, addition to the tax, additional amount, or penalty with respect to any such tax,

may file a claim for refund of the overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503–1, or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return filed by the person making the claim. The return on which the credit is claimed must be on a form which is prescribed for use, at the time of the claim, in reporting tax which corresponds to the tax overpaid. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the return period in which the error was ascertained, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return. No refund or credit of employee tax under the Federal Insurance Contributions Act shall be allowed if for any reason (for example, an overcollection of employee tax having been inadvertently included by the employee in computing a special refund—see § 31.6413(c)–1) the employee has taken the amount of such tax into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected.

(2) *Statements supporting employers' claims for employee tax.* (i) Every claim filed by an employer for refund or credit of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to allowance of the refund or credit. The employer shall retain as part of his records the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim filed by an employer for refund or credit of employee tax under section 3101, or a corresponding provision of prior law, collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also shall include a statement that the employer has obtained from the employee a written statement (*a*) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (*b*) that the employee will not claim refund or credit of such amount. The employer shall retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* If more than the correct amount of employee tax under section 3101 or

section 3201, or a corresponding provision of prior law, is collected by an employer from an employee and paid to the district director, the employee may file a claim for refund of the overpayment if (i) the employee does not receive reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit, (ii) the overcollection cannot be corrected under § 31.3503–1, and (iii) in the case of employee tax under section 3101 or a corresponding provision of prior law, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected. See § 31.6413(c)–1.

(2) *Statements supporting employee's claim.* (i) Each employee who makes a claim under subparagraph (1) of this paragraph shall submit with such claim a statement setting forth (*a*) the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, and (*b*) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see § 31.6413(c)–1).

(c) *Statements to accompany employers' and employees' claims under the Federal Insurance Contributions Act.* Whenever a claim for credit or refund of employee tax under section 3101, employer tax under section 3111, or either such tax under a corresponding provision of prior law, is made with respect to remuneration which was erroneously reported on a return or schedule as wages paid to an employee, such claim shall include a statement showing (1) the identification number of the employer, if he was required to make application therefor, (2) the name and account number of such employee, (3) the period covered by such return or schedule, (4) the amount of remuneration actually reported as wages for such employee, and (5) the amount of wages which should have been reported for such employee. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

§ 31.6402(a)–3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

§ 31.6404(a) Statutory provisions; abatements.

SEC. 6404. *Abatements*—(a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) Is excessive in amount, or

(2) Is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) Is erroneously or illegally assessed.

§ 31.6404(a)–1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a)(2) and (c) of § 31.6402(a)–2, as if the claim for abatement were a claim for refund.

§ 31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.

SEC. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

§ 31.6413(a)–1 Repayment by employer of tax erroneously collected from employee.

(a) *Before employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer—

(*a*) During any return period collects from an employee more than the correct amount of tax under section 3101 or section 3201, or a corresponding provision of prior law,

(*b*) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director, and

(*c*) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made. Such return shall be accompanied by a statement explaining the overcollection, setting forth the account number (if known) and name of the individual from whom the overcollection was made, and showing the total amount overcollected from and not repaid to the individual. If the employer is not required to make a return for such period, the employer nevertheless shall furnish to the district director a statement as described in the preceding sentence, on or before the date fixed for filing a return for such period, and shall pay the amount of the overcollection with such statement.

(2) *Income tax withheld from wages.* (i) If an employer—

(*a*) During any return period collects from an employee more than the correct amount of tax under section 3402,

(*b*) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director and before the end of the calendar year in which the overcollection was made, and

(*c*) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made.

(b) *After employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer collects from any employee and pays to the district director more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, and if the error is ascertained within the ap-

plicable period of limitation on credit or refund, the employer shall repay or reimburse the employee in the amount thereof prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of such limitation period. This subparagraph has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit, and the employer elects to secure the written consent of the employee to the allowance of the refund or credit under the procedure provided in paragraph (a)(2)(i) of § 31.6402(a)–2.

(ii) If the amount of an overcollection is repaid to an employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee tax under section 3101, or a corresponding provision of prior law, which was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of his records a written statement (*a*) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (*b*) that the employee will not claim refund or credit of such amount. See § 31.6413(c)–1.

(iii) If the employer does not repay the employee the amount overcollected, the employer shall reimburse the employee by applying the amount of the overcollection against the employee tax which attaches to wages or compensation paid to the employee prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of the applicable period of limitation on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this subparagraph.

(iv) For purposes of this subparagraph, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(v) For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

(2) *Income tax withheld from wages.* (i) If, in any return period in a calendar year, an employer collects from any employee more than the correct amount of tax under section 3402, and the employer pays the amount of such overcollection to the district director, the employer may repay or reimburse the employee in the amount thereof in any subsequent return period in such calendar year.

(ii) If the amount of the overcollection is repaid to the employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If the employer does not repay the amount of the overcollection, the employer may reimburse the employee by applying the amount of the overcollection against the tax under section 3402 which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made.

§ 31.6413(a)–2 Adjustment of overpayments.

(a) *Taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act*—(1) *Employee tax.* After an employer repays or reimburses an employee in the amount of an overcollection, as provided in paragraph (b)(1) of § 31.6413(a)–1, the employer may claim credit for such amount in the manner, and subject to the conditions, stated in § 31.6402(a)–2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on a return for a period ending on or before the last day of the return period following the return period in which the error was ascertained. No credit or adjustment in respect of an overpayment shall be entered on a return after the filing of a claim for refund of such overpayment.

(2) *Employer tax.* If an employer pays more than the correct amount of employer tax under section 3111 or section 3221, or a corresponding provision of prior law, the employer may claim credit for the amount of the overpayment in the manner, and subject to the conditions, stated in § 31.6402(a)–2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on the same return on which the employer adjusts, pursuant to subparagraph (1) of this paragraph, a corresponding overpayment of employee tax.

(b) *Income tax withheld from wages.* If, pursuant to paragraph (b)(2) of § 31.6413(a)–1, an employer repays or reimburses an employee in the amount of an overcollection of tax under section 3402, the employer may adjust the overcollection, without interest, by entering the amount thereof as a deduction on a return of tax under section 3402, filed by the employer for any return period in the calendar year in which the employer repays or reimburses the employee. The return on which the adjustment is entered as a deduction shall have attached thereto a statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations in this subpart and by the instructions relating to the return.

§ 31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.

SEC. 6413. *Special rules applicable to certain employment taxes.* * * *

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6413(b)–1 Overpayments of certain employment taxes.

For provisions relating to the adjustment of overpayments of tax imposed by section 3101, 3111, 3201, 3221, or 3402, see § 31.6413(a)–2. For provisions relating to refunds of tax imposed by section 3101, 3111, 3201, or 3221, see §§ 31.6402(a)–1 and 31.6402(a)–2. For provisions relating to refunds of tax imposed by section 3402, see §§ 31.6402(a)–1 and 31.6414–1.

§ 31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.

SEC. 6413. *Special rules applicable to certain employment taxes.* * * *

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958, the wages received by him during such year exceed $4,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958.

(2) *Applicability in case of Federal and State employees and employees of certain foreign corporations*—(A) *Federal employees.* In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes

a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); the term "tax" or "tax imposed by section 3101", includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121 (l) has been paid to the Secretary or his delegate.

[Sec. 6413(c) as amended by sec. 202(a)(1), Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043)]

§ 31.6413(c)–1 Special refunds.

(a) *Who may make claims*—(1) *In general.* (i) If, during any calendar year after 1954 and before 1959, an employee receives wages, as defined in section 3121(a), in excess of $4,200 from two or more employers, or if during any calendar year after 1958, an employee receives wages, as defined in section 3121(a), in excess of $4,800 from two or more employers, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid to the district director) exceeds the employee tax with respect to the first $4,200 or $4,800, whichever is appropriate, of such wages. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in § 1.31–2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). Employee A in the calendar year 1959 receives taxable wages in the amount of $3,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of $9,000. Employee tax (computed at 2½ percent, the employee tax rate in effect in 1959) is deducted from A's wages in the amount of $75 by B and $75 by C, or a total of $150. Employer D pays employee tax in the amount of $75 to the district director without deducting such tax from A's wages. The employee tax with respect to the first $4,800 of such wages is $120. A is entitled to a special refund of $30 ($150 minus $120). The $3,000 of wages received from employer D and the $75 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.

Example (2). Employee E in the calendar year 1959 performs services for employers F and G, for which E is entitled to wages of $4,800 from each employer, or a total of $9,600. On account of such services, E in 1958 received an advance payment of $600 of wages from F; and in 1959, receives wages in the amount of $4,200 from F and $4,800 from G. Employee tax was deducted as follows: In 1958, $13.50 ($600×2¼%, the employee tax rate in effect in 1958) by employer F; and in 1959, $105 ($4,200×2½%, the employee tax rate in effect in 1959) by employer F, and $120 ($4,800×2½%) by employer G. Thus, E in the calendar year 1959 received $9,000 in wages, from which $225 of employee tax was deducted. The amount of employee tax with respect to the first $4,800 of such wages received in 1959 is $120. E is entitled to a special refund of $105 ($225 minus $120). The $600 advance of wages received in 1958 from F, and the $13.50 of employee tax with respect thereto, have no bearing in computing E's special refund for 1959, because the wages were not received in 1959. Such amounts could not form the basis for a special refund unless E during 1958 received from F and at least one more employer wages totaling more than $4,200.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly-owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instrumentality who makes a return pursuant to such section) is considered a separate employer. For such purposes, the term "wages" includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of $4,200 paid in any calendar year after 1954 and before 1959, or $4,800 paid in any calendar year after 1958. For example, if wages received by an employee during any calendar year after 1958 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of $4,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $4,800 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly-owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(3) *State employees.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act, relating to voluntary agreements for coverage of employees of State and local governments, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; and the term "tax" or "tax imposed by section 3101" includes an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from an employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid pursuant to such agreement. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by States, political subdivisions, or instrumentalities by reason of agreements made under section 218 of the Social Security Act. Moreover, if during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages from one or more other employers, either private or governmental, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions.

(4) *Employees of certain foreign corporations.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l), relating to agreements for coverage of employees of certain foreign corporations, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); and the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from the employee's remuneration by reason of such agreement has been paid to the district director. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by reason of agreements made under section 3121(l). A domestic corporation which enters into an agreement pursuant to section 3121(l) shall, for purposes of this paragraph, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as an employer employing individuals on its own account (see section 3121(l)(9)). If during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages for services in employment, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions. For provisions relating to agreements entered into under section 3121(l), see the regulations in Part 36 of this chapter (Regulations on Contract Coverage of Employees of Foreign Subsidiaries).

(b) *Claims for special refund*—(1) *In general.* An employee who is entitled to a special refund under section 6413(c) may claim such refund under the provisions of this section only if the employee is not entitled to claim the amount thereof as a credit against income tax as provided in § 1.31–2 of this chapter (Income Tax Regulations). Each claim under this section shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services were performed for which such wages are received), and shall be filed after the close of such year.

(2) *Form of claim.* Each claim for special refund under this section shall be made on Form 843, in accordance with the regulations in this subpart and the instructions relating to such form. The claim shall be filed with the district director for the internal revenue district in which the employee resides or, if the employee does not reside in any internal revenue district, with the District Director at Baltimore, Maryland. However, in the case of an employee who does not reside in any internal revenue district and who is outside the United States, the claim shall be filed with the Director of International Operations, United States Internal Revenue Service, Washington 25, D.C., unless the employee resides in Puerto Rico or the Virgin Islands, in which case the claim shall be filed with the office of the Revenue Service Representative, United States Internal Revenue Service, Santurce, Puerto Rico. The claim shall include the employee's account number and the following information with respect to each employer from whom he received wages during the calendar year: (i) The name and address of such employer, (ii) the amount of wages received during the calendar year to which the claim relates, and (iii) the amount of employee tax collected by the employer from the employee with respect to such wages. Other information may be required but should be submitted only upon request.

(3) *Period of limitation.* For the period of limitation upon special refund of employee tax imposed by section 3101, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration).

§ 31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.

SEC. 6413. *Special rules applicable to certain employment taxes.* * * *

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

§ 31.6414 Statutory provisions; income tax withheld.

SEC. 6414. *Income tax withheld.* In the case of an overpayment of tax imposed by chapter 24, * * * refund or credit shall be made to the employer * * * only to the extent that the amount of such overpayment was not deducted and withheld by the employer * * *.

§ 31.6414–1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

(1) Tax under section 3402 or a corresponding provision of prior law, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return of tax under section 3402 filed by the employer. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement, which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 31.6674–1 Penalties for fraudulent statement or failure to furnish statement.

Any person required to furnish a statement to an employee under the provisions of section 6051 is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section or § 31.6051–1, or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is $50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

§ 31.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 31.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 31.0–3 of Subpart A of the regulations in this part relating to the scope of the regulations.)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 13, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

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